Nil dictum quod non dictum prius
OR A
TRANSCRIPT
OF
GOVERNMENT,
Conſidered as it is in the
STATE
OF
NATURE or RELIGION.

That no Temporal Magiſtrate is at this Day conſtituted *Jure Divino* by Preſident or Precept in the
OLD or NEW TESTAMENT.

FURTHER
Of the Government of our own Nation and more particularly of *PARLIAMENTARY POWER.*

1. As it is the *Great Councel* of the *Kingdom.*
2. As it is the *Supream Court* of *Judicature.*
3. As it is the *Legiſlative Power*, and how theſe Powers are enjoyed and Executed by all or any part of the States of that great Aſſembly conſiſting of
KING, LORDS and COMMONS.

Cicero *de Invent. p.* 50.

> *Ea ſapientia & virtute majores noſtri fuerant ut Legibus ſcribendis nihil ſibi aliud quam ſalutem atq; utilitatem Reipublice proponerunt; Ideo à Legibus nihil convenit Arbitrari niſi quod reciprocè conducit proficiſti quoniam ejus cauſa ſunt comparatè.*

By *W. D.* Eſq;

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B:: KinG LORDS [illegible]

Om 20
681

Fellowes

Prœmium Lectori.

I *Hope Reader without miſtake I may aſſert this as the aſſent of all the Societies of Men, within this Kingdom how ever ſelf diſtinguiſht, that they allow of Government as neceſſary in order to their peace and ſafety. And that they moſtly pretend to be unanimous in their acquieſcence and ſubmiſſion to the Eſtabliſh't form of Rule within this Realm, conſiſting of the three Eſtates.* The King, the Lords, *and* Commons. (*The* Romaniſts *who would introduce the moſt deteſtable ſpiritual Tyranny of the Pope, and the Enthuſiaſts who adore their own deluſions only excepted) yet many of thoſe who ſo plauſibly and familiarly aſſent unto the Text do extreamly diſagree and differ in the Comment, and ſtudy to frame* *unto themſelves Arguments and Axiomes to ſupport either* Prerogative *or* Liberty *(two happy Terms in Union, but defended and aſſerted as two Extreams are Irreconcileable and equally ruinous and Impolitick) to ſerve and gratifie particular fancy Intereſt or Deſign, without making a due Proviſion and Regard for the General Good and Safety. And farther palliating their Exceſſes or Defects under plauſible and fair pretences, inſinuate and diſperſe their miſchief, ſometimes authorizing their Reaſoning and Diſcourſes from Forreign Rules and Maxims falſly introduced, and without due conſideration worſe applyed.*

If the prerogative of the King, overwhelm the liberty of the People, it will be turned into Tyranny, if liberty undermine the Prerogative it will grow into Anarchy.

OR elſe from humor and deſign (or by ſome more ſecret influence corrupted and perverted) ſeem earneſt to recommend or rather obtrude upon us a reſemblance and pattern of a Corrupt Monarchy (from the beſt temper'd one except our own before the uſe of States of France *was laid aſide) to the double Tyranny of Popery and Arbitrary Power.*

NOR is there miſtakeleſs who ſo far endeavor to leſſen and abridge the Royal Power of the MONARCH, that they place all Soveraignty in the empty name, and ſcarce the ſhadow of a Parliament, not rightly either knowing differencing or fitly applying the Power, juſtly and diſtinctly belonging to that great Counſel or Aſſembly.

State ſuper vias Antiquas---- *is an infallible direction, and not to be neglected in our conduct in the Sacred or Civil Government.*

Omnem divini humanique moris memoriam abolemus cum nova peregrinaque patriis & priſcis preferimus. Titus liv. lib. 8.

To that purpoſe I offer the enſuing Tranſcript, obſerving ſo far as I am capable the Method of that unerring Court the Parliament, and the daily practice of all our Benches of Record, who imitate and conſult the actions, and follow the Steps and Preſidents of their Predeceſſors, as their beſt rule to guide them. According to their Coppy I have endeavor'd to Tranſcribe, and from the beſt aſſiſtances in my ill furniſh't *furniſh't ſtudy; I have labor'd to aſſert and explain the Juſt and Rightful Power of Parliaments, in a Method hitherto unuſed though I hope fairly warranted by our known Records, or fully evinced by the Teſtimony of allowed Hiſtorians.*

THERE is yet one peculiar Tribe who arrogate an almoſt infallible power, in Authorizing or Approving the Limits and Methods of Authority and this Jeſuited Maxime--Summa enim eſt ratio quæ pro religione facit *muſt ſupport this Eccleſiaſtical political Machin, which they ſet up to be* jure divino *or reduce to a kind of Pupil-age to their Hierarchy, according to the different deſign, intereſt and direction of the workmen, for they are not without the taint of politick Schiſm, each one being captivated their own Apophthegmes; and* ~~*twine*~~ *and dandle the* Royal Ball *with ſuch unskilful and pedantick palmes, that 'tis moſt unſafe to commit the Government to ſuch inexperienc'd, ſuch unapproved Arbitrators.*

TO ſettle Authority on it's Juſt Baſis, *and to wipe off the adulterate Varniſh to ſettle it in it's natural and re-*

of

ligious Luſtre and Beauty, is the deſign of the beginning of this Enſuing Tranſcript, ſo that we may after with greater aſſurance and reaſon admire, the Wiſdom, Moderation, Chriſtian Prudence and Conſtancy of our Kings, Nobility and commons who have both by Preſident and Precept left us unerring rules to eſtabliſh Authority and Obedience: The true meaſures to give Cæſar his due: and for our walking in our inoffenſive liberty being aſſured to us.

Si nolumus Leges Angliæ mutare. In rebus nobis conſtituendis evidens utilitas eſſe debet ut ab eo jure recedatur quod diu equum viſum eſt.

W. D.

IN this diſcourſe of Government, I ſhall firſt give it's definition, and then conſider it in

1. The State of Nature.

2. Of Religion, and in it whether any Temporal Power be conſtituted at this day *jure divino*, by either Preſident or Precept in Holy Writ that is applicable unto us.

3. Make ſome obſervations of the Laws and Conſtitutions of our own Kingdom the better to direct me in my duty in my proper ſtation.

Government is an orderly conſtituted Power for publick good.

Orderly to prevent Anarchy and Confuſion.

Conſtituted Power to prevent Uſurpation.

For *Publick Good* to prevent Tyranny and Oppreſſion.

I ſhall paſs by all the Tedious controverſies of the ſeveral forms, and reſt ſatisfied that what ever form is practical and neceſſary under all the different compellations does infallibly, endeavor to aſſert this Fundamental and undeniable Maxime. *Quod ſalus Populi eſt Suprema Lex.* It is *jus Gentium ſeu Naturæ. Quod naturalis ratio, inter omnes homines conſtituit, & apud omnes peræque cuſtoditur*, for 'tis certain the Fundamental and natural cauſes of political happineſs in all Governments are the ſame, from the principle of ſelf preſervation Men framed the *Jus humanum.* The Municipal

Laws, the Laws of particular Nations, and the ſeveral and determinate ſanctions, that concern this or that Individual Government State or People, have either received their unprov'd Eſtabliſhment, from refined reaſon and uſeful experience, or elſe have been impoſed by Incroachment, Tyranny, and Uſurpation, and are in this laſt State no longer binding than while the Government is inabled by ſuitable Methods to exert their obedience.

All Governments and Societies of Men do in proceſs of long time, gather an irregularity and wear away much of their primitive inſtitution; it has been the Wiſdom of all ages from undoubted right in nature, to renew at fit periods thoſe errors defects or exceſſes, that have inſenſibly crept into the publick adminiſtration, to bruſh the duſt off the Wheels, and oyle them again or if it be adviſable to chooſe a ſet of new ones.

This reformation is moſt eaſily, and with leaſt diſturbance to be effected by the Society it ſelf, no ſingle Man being forbidden by any Magiſtrate to amend their own manners. And much more *All Societies* have the liberty to bring themſelves within compaſs, But if Men themſelves ſhall omit their duty in this matter, the only juſt and lawful way remains by the Magiſtrate, who having the greateſt truſt and intereſt in preſerving the publick welfare had need care to redreſs in good ſeaſon, whatever corruptions, that may endanger and infect the Government. Otherways if the Society (or Magiſtrate) it ſelf ſhall be ſo far from correcting its own Exorbitances, as to defend them even to the offence and invaſion of the Univerſality, this work neglected falls to the peoples ſhare (from which God defend every good Government) for though all Commotions be unlawfull, by this means they prove unavoidable.

IN all things that are inſenſible there is nevertheleſs a natural force alwaies operating to expel and reject whatſoever is contrary to their ſubſiſtance. And the ſenſible but bruitiſh creature heard together as if it were in Council againſt their common inconveniences, and imbold'ned by their multitude rebel even againſt Man their Lord and Maſter.

THE common people in all places pertake ſo much of ſenſe and nature that could they be imagined and contrived to be irrational yet they would ferment and tumultuate at laſt for their own preſervation; yet neither do they want the uſe of reaſon, and perhaps their aggregated Judgment diſcerns moſt truly the Errors of Government; for as much as to be ſure, they are the firſt that ſmart under them. In this only they come to be ſhort ſighted, that though they know the Diſeaſes they underſtand not the Remedies, and though good Patients are ill Phyſitians.

FOR as the true ſtreſs and force of all Laws lie in their aptitude for the General good of the people, ſo no farther obligation is implied than as the ſame be of Utility to the publick. Neither does the Opinion lead to Atheiſm, but proceeds rather from honourable Opinion concerning God, That he could not Inſtitute Government to the prejudice of Mankind, or exact obedience to Laws that are deſtructive to Society.

THEREFORE ſo long as the Magiſtrate ſhall provide Laws that appear uſefull in the experiment, the whole people will ſtand by him to exact obedience, from the refractory, and perſue them like a Common Enemy. But when they become unprofitable they expire by univerſal neglect, and without repeal grow obſolete.

NOW even in this ſtate God may be truly ſaid Providentially to conſtitute the Magiſtrate to Dominion, and the People to Obedience: Happy had it been for Prince and People had they never changed this plain and eaſie rule, for though there may appear leſs Majeſty and State than in a Terrible & Arbitrary power. The other method's ſafe, the parts are uniform and regular, the Conſtitution Natural, all parts ſo poized and fitted in a juſt Mathematical proportion and relation each to other firmly knit, and by ſuch unerring policy united, its *Baſis* is immovable, its Structure is impregnable, its Aſpect grave and venerable.

AT our entry into the Conſideration how Government is eſtabliſh'd in Religion, we cannot but obſerve how that ſome by an Intereſted Error have taken up a vain Cuſtom, for one cutteth a Tree out of the Foreſt, and decketh it with Silver and with Gold, and in place of a Governour erect an Idol.

—— Quo tantum vertice ad auras
Aerias quantam radice ad Tartara tendit.

And the better to beget it adoration have ſtampt it with a new impreſſion called, *Jus Divinum.* Be it allowed,

If to do Good they Jus Divinum *call,*
It is the Grand Prerogative of all.
If to do Ill unpuniſht be their right,
The ſame's not granted the great King of night.

Let his Holineſs the Pope who arrogates an univerſal temporal Dominion, and the other Monarchs (who in my Judgment are equally intitled to this plea) determine how to uſe it, how they may in groſs divide, or ſub-divide the term, to ſerve their individual Intereſts and Deſigns. The Popes claim as firſt Inventor with the reſt of his Monopolies will be defined to be infallible, and appropriated with the reſt of the Patrimony of S. *Peter* by that ſelf-intereſted order. And I am confident though he may imbelliſh and adorn the Crowned Heads of his Royal Children with the too oft miſapplied additions of moſt Chriſtian, and moſt Catholick,*&c.* he will reſerve that Character as a peculiar divine inſcription for his Infallible Crown.

'TIS poſſible it had not been (or yet may not be) all-together uſeleſs by thoſe who ſo much Deifie the Magiſtrate to publiſh a Reſolution whether Religion was intended to be ſubſervient to Government, or that Government was eſtabliſhed to comply with the principles and dictates of Chriſtianity. A learned Gentleman of this Age has aſſerted the *Turkiſh* Policy to admiration, who Calculate their Religion ſo advantageouſly to Government, that it is wholly ſubſervient and accommodated to all the occaſions and circumſtances of that Empire.

Marvell's Hiſtor. Eſſay. p. 1.

But if we will comport our ſelves according to the pattern of our bleſſed Saviour, let us know that though he came in the form of a Servant, and permitted to the Kings and Emperors the uſe of their Dominions, he thought it good reaſon to retain his own Religion within his own Cogniſance, and exempt its authority from their Juriſdiction. In this alone he was Imperious, and did not only practice it himſelf againſt the Laws and Cuſtoms then received, and in the Face of the Magiſtrate, but continually ſeaſon'd and hardned his Diſciples in the ſame confidence and obſtinacy, he tells them they ſhall be brought before Kings and Governours for his Name, but fear them not, he will be with them, bear them out, and juſtifie it againſt all oppoſition; not that he allowed them hereby to violate their duty to the publick by any reſiſtance in defiance of the Magiſtracy, but he inſtructed and animated them in their duty to God in deſpight of ſuffering.

BUT to return from the digreſſion, and that we may try the ſtrength and truth of the Aſſertion by an unerring rule (which will not only teach us true obedience, but will alſo regulate and give to Power its juſt extent) let us ſubmit the difference to be determined by evidence of Sacred Writ. And without gratifying humour or indulging ſence, in order to a true ſearch of what we ought to know, let us enquire if this *Jus Divinum*, if this holy, heavenly, Grand Prerogative has its Warrant and Commiſſion by either Pattern or Precept in the Old or New Teſtament, ſo as to authorize any Perſon lawfully at this day to uſe the claim. And to clear the point we muſt run through the ſeries of the *Jewiſh* Original and Story for a Pattern, as well as the Goſpel Inſtitution to find our Rule, or Precept.

WHETHER the *Jewiſh* People and their Regiment will make a Preſident for us, let us firſt conſider them in their original, I hope it is no hereſie to place the Creation of Mankind in the work of the Sixth day, *Gen.* 1. having the authority of *Moſes* to that purpoſe, and to aſſert Mankind was created as other Creatures by the power of God's Word.

NOR to inſinuate from the ſecond Chapter of the ſame Book, (a Chapter intentionally and of ſet purpoſe deſigned by *Moſes* after a ſhort recapitulation of the work of the Creation in the firſt Six days, to give the account of the diſtinct Original of *Adam* who was the Father of that people of whom he was to write his Hiſtory,) that the ſtate of *Adam*'s diſtinct formation and perticular election is the burthen of that whole Chapter; for God had not only finiſhed the General work of the Creation, as is above ſpe- *Gen.* 2.

cified,

cified, but after he had made up his account, had cloſed his Book, and ſolemnized his reſt, then after in a different ſtyle he ſays, that God *Formavit Adam de limo terræ (non verbo) ſicut lutum eſt in manu figuli,* (as *Jeremiah* the Prophet alluding to this matter explains it, and *Iſaiah* calls God *plaſtes ejus) & ſpiravit in faciem Adami ſpiritum vitæ tuliſſe eum in Paradiſum, &c. plantaverat autem Dominus Paradiſum à principio in quo poſuit hominem ſcilicet Adamam, ſit dictum propter excellentiam.*

WE read of Three men that had a miraculous formation; *Adam*, to whom the Earth was Mother, God the Father, as in
Luke 3. the Genealogy of our Saviour, *Who was the Son of Henos, who was the Son of Seth, who was the Son of Adam, who was the Son of God:* by Formation not Creation.

Gen. 18. 2. *Iſaac*, to whom *Abraham* was Father, God the Mother, *deſierant enim Sarah fieri muliebria*, and *Iſaiah* calling the Sons of *Iſaac*, *ait ſe portaviſſe in utero ſuo & geſtaviſſe in vulva ſua.*

3. *Jeſus Chriſt*, to whom the Virgin was Mother, God the Father.

BUT it is only pertinent to my purpoſe that it be proved that *Adam*, by ſpecial election of God, was the Father and Founder of the *Jewiſh* people only, who by a
Deut. 7. 26, 27. farther election, the Lord their God had
Deut. 10. choſen to be a precious people unto himſelf above all people that are upon the Earth. Behold Heaven, and the Heaven of Heavens is the Lord thy God's, and the Earth with all that therein is; notwithſtanding the

Lord ſet his delight in thy Fathers to love them, and did chooſe their Seed after them, even you above all people, as appeareth Gen. 15. this day.

THE Land of *Canaan* elected of the Deut. 11. Lord, promiſed to *Abraham* became the 10. lot of their inheritance, 'tis not as the Land of *Ægypt* from whence you came, *&c.* but the Land whether you go to poſſeſs, it is a Land of Mountains and Valleys, and drinketh water of the rain of Heaven. This Land does the Lord thy God care for the Eyes of the Lord thy God are alwaies upon it from the beginning of the year even to the end of the year.

HAVING proved the *Jews* our ſuppoſed Pattern elected in their National Collective Body, elected in their inheritance and poſſeſſion, we will now conſider what kind of Rule, and what Method for Government God was pleaſed to provide for that choſen People; by his peculiar aſſignation and not appliable to any other Nation under Heaven.

A neceſſity of Government, rather then any durable eſtabliſht Form may be inferred from the variety of their Adminiſtration. Their firſt was Oeconomical or Pater- Deut. 7. nal, a Government proper in nature to ſuch Kin. 1. 8. a narrow Empire for they were the feweſt Levit. 20. of all People; *& illos ſeperavit Deus in hæreditatem, de Univerſis Populis Terræ*: and that they might be incorrupt in their generation, as well as pure in their profeſſion. They were prohibited to make Marriages, Covenants or even to ſhew compaſſion vnto other Nations.

WE read of no alteration for near 2460 years, and but a very ſhort and conciſe Hiſtory of that great revolution and tract of time, I fear we may moſt juſtly take up Eſdras 4.l. Cap. 14. v.20. the lamentation of *Eſdras, cur lex patrum noſtrorum interierit & conſtitutiones ſcripta nuſquam habeantur, poſitum eſt igitur ſeculum in tenebris & habitatores ejus ſunt ſine lumine quoniam lex tua ex uſta eſt quamobrem nemo ſit qua a te facta ſunt, vel qua incipiunt fieri opera.* WE are only inſured that what we have from that Divine Penman *Moſes*, is all a ſacred truth (though I chooſe to call his works now extant commentaryes rather then his Hiſtory)

THE deſcription of their Lawes is writ *veloci calamo* and the Character ſo dim, we have much trouble to finde its Cypher.

Gen. 2. THAT Adam was not abſolutely *ſui juris*, we have the account of this firſt Law, *of all the Trees of the Garden thou mayeſt freely Eat, but of the Tree of Good and Evil, thou ſhalt not Eat of it*; The penalty is ſubjoyned *for in the day thou Eateſt thereof thou ſhalt dye the death*, this is the firſt time Sin Gen. 4. Gen. 26. v. 5. was puniſhed by a Legal death or imputed unto man; there were Lawes for property, for obſervation of the Sabbath and for Sacrifice Cain and Able brought offerings unto the Lord; likewiſe the Law againſt ſhedding blood is evident by *Cains* lamenting himſelf to the Lord: my puniſhment is greater then I can bear, the ſearch is farther unfrequented, the diſtance great. the light opacious, and I not ambitious to be unwarrantably curious.

Moſes begins and *Joſhua* ends the period; Deut. 33.9 'tis ſuppoſed they acted by a Monarchical or ſingle Rule. The Government in the next dynaſty we muſt acknowledge authorized, by Gods ſpecial immediate Election, the Peoples choice not rarely anticeeding, or ſucceeding to atteſt their approbation, for Judges came next in place; the original of whoſe power was neither by inheritance nor abſolutely popular, for the Lord raiſed up Judges to ſuccor his people, to Judg. 2. 16. deliver them from the hands of their Enemies in all their exigence and extremity. The Lord ſtirr'd up a Savior to the Children of *Iſrael* and the Spirit of the Lord Judg. 3. came upon him, and they acted in that 9. 10. Spirit and by that Power invincible that ſubdues all Enemyes according to the methods of his own diſpenſation without reſpect to the congruity of means as may be read in the 6. and 7. *Chap.* of *Judges.*

THE *Jews* continued under this ſtate of Regiment for above Three hundred years, not without ſeveral Interregnums and Vacancies; in which their great affairs were managed by their Sanhedrim or Parliament, the Government being termed an Ariſtocraſie; Jud. 10. 18. tho in that time there is alſo pregnant inſtances of popular choice. And the People *Cap.* 11. 6. 29. and Princes of *Gilead* ſaid one to another; whoever will begin the Battle againſt the Children of *Ammon*, the ſame ſhall be head over all the Inhabitants of *Gilead.*

And they ſaid unto *Iptah*, come and be our

Jud. 9. *Abimelick* Deut.26, our Captain, and the Spirit of the Lord came unto *Iptah*; for yet God was their King, and they had not renounced the mutual Covenant or Stipulation made betwixt God and them.

THEY continued under divers viciſſitudes unto the days of *Samuel*; The Dicta- *Godwins Antiq.* Jud,8,23. tors power among the *Romans*, was not unlike this laſt mentioned both for continuance and deſign, choſen in the moſt extream and deſperate ſtate of things, the danger over the Dominions ended; *I will not reign over you, neither ſhall my Children reign over you, but the Lord ſhall reign over you*, ſaid *Gideon*.

'TIS not altogether impertinent to ſubjoyn Three lives from the argument to the Book of *Judges*, that the Churches of God maintained Battles for the maintenance of true Religion againſt Idolatry and ſuperſtition.

Next that Common-wealth or State is in great danger when God giveth not a Magiſtrate to retain his people in the pureneſs of Religion, and his true Service. And I think for what occurrs hitherto, we may as well fetch a Pattern for Plurality of Wives and Concubines as for any Government at this day. Entring upon the laſt Scene of this Dynaſty, *Samuels* ſtory, we find the people of *Iſrael* as the Spirit of the Lord had before ſuggeſted, unſatisfied with their preſent Government.

Samuel was grown old (and though he Deut. 17. 15. 16. had appointed his Sons Judges) all the Elders of *Iſrael* gathered together, and came to *Samuel*, beſpake their danger, or rather fear of their Enemies; deſired to be like unto other Nations, to have a King to go in and out before them, and fight their Battles. Here they rejected me ſaith the Lord, *Rex* Deut. 26. *Regum & Dominus dominantium*, contrary to their mutual Stipulation. Thou haſt ſet up the Lord thy God to be thy God, and the Lord hath ſet thee up this day to be a precious people unto him to make thee high, and that thou ſhouldſt be a Holy people unto the Lord thy God.

Oh Thrice and ever renowned *Samuel*, with thee I cloſe this period, and propoſe thee a pattern to all Ages preſent and to come. That Prince that can live up to thy Preſident, truly Coppy thy exemplar, be the Counterpart to thy Original ſhall ne'er be envied, the *Jus Divinum* of thy Charter. 1 Sam. 12. And he ſpake to all *Iſrael*, Behold, *here I am, bear record of me before the Lord; whoſe Ox have I taken? or whoſe Aſſe have I taken? or whom have I done wrong to? or whom have I hurt? or of whoſe hands have I received any bribe to blind my Eyes therewith, and I will reſtore it you.* Then they ſaid, *thou haſt done us no wrong, nor haſt hurt us, neither haſt thou taken ought of any mans hand.*

Samuels Sons might be reckoned under 1 Sam. 8. this Government, either by Diſſent, or by Commiſſion, being deputed Judges by their Father; but being rejected from the Catalogue, and noted under the eſſential incapacities for that Regiment; *They walked not in his way, but turned aſide for lucre, and took rewards, and perverted judgment. Wherefore all the Elders of* Iſrael *gathered themſelves together,*

gether, and came to Samuel, *made his Sons Vices the Arguments for their removal from the Government, and deſired they might have a King*, &c. In all the eſtabliſhments of the Dominion, hitherto we find the Magiſtracy to be *jure divino*, a choſen Government, for a choſen and elected people, a perfect Theocraſie, for hitherto had the Lord holpen 1 Sam. 7. 12. *Iſrael.*

THE perſons ſucceeding in the next Dynaſty, were by the ſame authority Aſſigned, 1 Sam. 9. 16, 17. Appointed, Elected and Inſtituted, that is, by Gods immediate and expreſs direction: The Lord revealed to *Samuel*, ſaying, *To morrow I will ſend thee a Man of the Land of* Benjamin, *him ſhalt thou anoint to be Governour over my people* Iſrael, and after ſaid, ſee, *this is the Man that ſhall Rule my people.* And *Samuel* anointed him, and the people gave their Suffrage and Conſent in this joyful Acclamation; *God Save the King.*

SAUL thus elected, was the firſt that was ſtiled by the name of King over that People, and was not inveſted with an Hereditary Title; for the People went to *Gilgal* after their victory over *Ammon* to renew their Kingdom, and made Saul their King before the Lord; In little time after, in order to his depoſition for not walking uprightly before the Lord; the Lord during his reign elected *David, Samuel* anoin-
1 Iſa. 16. ted him by expreſs command; and the Spi-
1 Iſa. 25. rit of the Lord came upon him. The Prophet leaves us mention that he told the People the duty of the Kingdom and wrote in in a Book, and laid up before the Lord

according to the expreſs command of God in his Prophetical care of that Kingdom. Deut. 17. 17,18,19. *And when he ſhall ſit upon the Throne of his Kingdom then ſhall he write him this Law repeated in a Book by the Prieſts and Levites, that he may prolong his days in the Kingdom.* Here was an Obligation intimated lying on the King as ſolemn and ſacred as a Coronation Oath; And we may ſatisfy our ſelves the Allegiance of the People was comprehended in their ſtipulation before the Lord in *Gilgal*, they there offered Peace-offerings before the Lord at that Solemnity.

BE it here remembred, that tho the Children of *Iſrael* were gratified with the formality of a King by *Samuel*, by Gods appointment; God had not wholly diſintereſted himſelf from the Government and Conduct of their affaires, nor quit the care of their Welfare and Preſervation; for, both King and People were under a ſtrict Command and Obligation of Obedience. 1 Sam. 12. 14,15. 24, 25. *To fear the Lord their God and Hear his voice, and not diſobey the word of the Lord* &c. *But if ye will not Obey the hand of the Lord ſhall be upon you and upon your Governours*; God wrought a Miracle at the delivery of this admonition, that it might work the better effect, and make deeper impreſſion both upon King and People; concluded in this ſharp and ſevere Denuntiation. *But if ye do wickedly you ſhall periſh both ye and your King.* A demonſtrative inſtance that God did immediatly intereſt himſelf and claime and exert the ſoveraignty and ſuperintendency in particular over that ſtate is in that he both by Preſcript and Direction did provide in all neceſſary emergences of their temporal Adminiſtration, and in that he ſeverely rebuked King *Saul* in perſon for his Rebellion: And as a further Argument of his Authority and Diſpleaſure did primarily *& per ſe* authoriſe his depoſition: The Prophet *Samuel* by the ſpirit of the Lord reprehending the King ſayiug, *Rebellion was worſe then the Sin of Witchcraft.* 1 Sam. 15.

Tis certainly moſt apparent that under their ſtate of Theocracy. The Magiſtrate as well as People, were obliged under Covenants and Obligations of Allegiance unto God their chief, that the Sin of Rebellion was indifferently appliable to either, and as that Crime was committed only againſt God, as their equal Soveraign, ſo was the puniſhment there appointed by his eſpecial Aſſignation, both for the Sentence, and its Execution upon the Prince or People, who were to ſuffer by it. Neither is it eaſily inferr'd from Sacred ſtory (until the *Jews* became Conquered, and Tributory to other Nations) that the People were Arraigned for Rebellion under any morral or politick conſideration. Nor were thoſe Reſolutions or Actings which concerned the publick ſafety, or liberty, cenſured under that deteſtable doom, otherways their practiſes towards the Sons of *Samuel*, and the general defection of the Ten Tribes under *Rehoboam*. The murderous Aſſaſſination of *Ahab*, &c. could not have paſſed without being Stigmatized with that black and approbrious

ous

brious Character, which ſuch hainous diſſertions did deſerve. And it may not Improbably be ſuppoſed by the examples of their ſtory, that when the publick weal and intereſt came in conſideration or hazard that a ſtubborn expoſtulation with their mediate ſuperiors, was ſometimes and under ſome circumſtances allowed both juſt, convenient and practicable.

IN all the time, during the continuance of *Iſrael's* Monarchy, he ſent his Prophets and his Meſſengers riſing up Early, and Laboring continually to do his Meſſages & Errands, by threats, by invitations, by both the Methods of reward and puniſhment, in ſo much that the Volumes of the Prophecies, the Records of his care and tenderneſs, the Evidences of his Love, and Heavenly Clemency towards them, exceed for bulk and burthen, the whole books of the Chronicles and Regiſters of that once puiſſant flowriſhing and moſt redoubted Monarchy. The books of *Joſhua, Kings,* and Chronicles, are but Epitomes of their larger ſtory; by ſome are thought to be but *Apographs*: and ſcarcely can be called Originals; if we conſider the Authers to which they do referr, nothing more frequently accurring in thoſe Treatiſes then. *Ecce ſcripta ſunt vel in libris Nathan vel in libris Gad, vel in libris ſermonum dierum* Iſrael *&* *Regum* Juda *vel in verbis Jehu filij* Hanani, *vel in ſermonibus Hoſei, vel apud* Iſajam *Prophetam, ſuo illo libro Hiſtoriarum qui lumine caſus eſt.* Or in the Acts of *Solomon* or in the Book of *Samuel* of the duty of the Kingdom *&c.*

1 Sam. 13. 13. IT is farther apparent that *Saul* forfeiting his Allegiance loſt his Kingdom, thou haſt done fooliſhly in not performing my Commandments, and thy Kingdom ſhall not continue; the Lord only is, *Rex Regum & Dominus dominantium*, God calling himſelf the ſtrength of *Iſrael*, hath choſen him a Man after his own Heart, and Commanded him to be Governour over his People; *Nam conglutinatur eſt dominus Judeis & Amavit eos, & elegit eos dominus qui dilexit eos, ut ſi natorum ſuorum Mater eſſet immemor judeorum tamen non Obliviſceretur Deus.* 1 Sam. 15. 29. Iſaiah 63.

GODS gracious promiſes to, and election of that People, began with *Adam*, renewed with *Abraham*, confirmed to *David*, God moſt aſſuredly did perform, and by his providence and power, tho. not always by a like viſible meanes exerciſed his Dominion and Government over that People, untill the Scepter was to depart from *Judah*, which was the forerunner and demonſtrative Token of the *Meſſiah*. And then the Law-giver did depart from between *Judah's* feet.

GODS purpoſes were then accompliſhed, his promiſes then performed, the Earthly Kingdom of the *Jewes* did then receive its period and conſummation, the purpoſe and deſign of their Election in fulneſs of time manifeſted and diſcloſed, and all thoſe particular and extraordinary methods of Adminiſtration uſed to that People under the ſeveral diſtributions of Government intirely ceaſed, from the inſtances before alleged without running the tedious ſearch of their uncertain and variable ſtate for the ſpace of nine hundred yeares through the ſeveral viciſſitudes of their proſperous and unhappy fortunes, in their adventures, of Baniſhment, Captivity and Slavery; We may without doubt infer that their Government, at ſeveral times would afford a pattern to all equally as to any particular kinde of Magiſtracy and dominion, even to run the pattern to *Popiſh* Tyranny and *French* ſlavery, and from paralel Reaſon too; if we inquire the cauſe of their Captivity, for leaning to Idolatry, and forſaking the Statutes of the Lord their God.

BUT, conclude their Government a Theocracy, and under a particular election, their ſtate under circumſtances peculiar to its ſelf, and the matters and rules, for their tranſactions not tolerably to be applied to any Nation under Heaven, the precept being ever poſitively, ſtrictly directed unto them, who were Gods peculiar portion, and whoſe Lawes were confined to their own Tribes, as were their Allegiance and Religion? Their principle and command was to do this and live, and leaſt they might be ignorant of their *Agenda's*, God gave them their infallible and unerring Rule, the Law, and by his immediate ſpirit did deſcribe and dictate the whole and intire ſanction and all things requiſite, for the obſervance in the Sacred, Civil and Military State both of Ceremony and Subſtance, for perſon or office for private or publick concernment, and was ever in all exigences ready to encourage their endevours for his Service, and their own benefit. And to reſolve their doubts in all things that were miſterious, they were not without either his immediate directions and illuminations, or had ſuch faithful meſſengers, the juſt interpreters and deliverers of his errands, that when their own, corruptions did not intervene to hinder, he was willing to be ſought, ready and eaſy to be found by them.

THEIR Lawes were in part Miſtical, and in part Moral, the Miſtery called the pædagogy (the Types, Figures and Reſemblances being all accompliſhed by the coming of our Bleſſed Saviour) were all aboliſhed together, with the diſſolution of their then preſent Temporal Government, and the promiſs to *Abraham* began to Operate; *Benedicitur in te omnes Nationes terræ*, for then the *Gentiles* in perſuance of Gods Eternal purpoſe were Adopted through Jeſus Chriſt in himſelf, according to the good pleaſure of his Will, the *Jews* were firſt entitled by election, and that by nature, the *Gentiles* by Grace or Adoption, *quæ ſancta res eſt & beneficium naturæ immitatur.* Gen, 12. 1 Epheſ.

SO that npon the whole matter I conceive it evident, that neither the Precept, nor Pattern of that Nation will warrantably be accommodated to juſtifie the claime of any Government at this day to be *Jure divino.* Neither would I have the Prophetick Charactei racter of a King, given by *Samuel*, miſtaken for a Charter, 1 *Sam*. 8. beginning at the 10. *verſe*.

I ſhall only make ſome ſhort Obſervations from the aforegoing diſcourſe in reference to that People.

I. That neither the Judges, nor the Kings of *Iſrael* and *Juda*, had authority or permiſſion, to Introduce, Authoriſe or Promote Idolatry, or Superſtition among their People; nor to innovate any thing againſt the expreſs Tennor of Gods command and moniſſion, which was to be their Guid and Rule.

II. That the People under that ſtate were not debarred of their natural right of power, in their extremities and dangers, to elect to themſelves Rulers and Governors, ſuch as they Judged capable to ſerve them, by the preſidents of *Gideon*, *Jeptha*, and *Saul*.

III. That by the ſame inherent Right, where God himſelf had not made the immediate and poſſitive aſſignation, the People had right to judg and determine of the perſons capacity to ſerve them, and conſequently in the ſtrength of that Right, might either accept or require one more agreable, by the preſident of *Samuel's* Sonnes rejected, and *Saul* choſen, *Abimileck*, &c.

Judges 9.

IIII, That by the ſame Right in nature, they had a power to exhibit their juſt complaints and preſent their grievances, which if not redreſſed they might renounce and wave their Allegiance, and betake and ſubmit themſelves unto the dominion of another, by the preſident of the Ten Tribes.

V. This happy Kingdom thus eſtabliſhed and provided for, continued only entire for three Generations, then by Gods ſpecial order, the Ten Tribes revolted from the houſe of *David.* The People had their part and ſuffrage in that revolt, All the congregation of *Iſrael* came and ſpake to *Rehoboam*, ſaying, *Thy father made our Yoke grievous, now therefore make thou the grievous ſervitude of thy father and his ſore Yoke which he put upon us lighter and we will ſerve thee.* And the King after time of Conſultation anſwered them ſharply, by ill counſel; threatned to make their burthens greater, and whereas his father had chaſtiſed them with Rods, he would chaſtiſe them with Scourges. So when all *Iſrael* ſaw that the King regarded them not; the People anſwerd the King thus, ſaying, what portion have we in *David*, we have no inheritance in the Sonn of *Iſhaj.* to your Tents O *Iſrael* Now ſee to thy houſe *David*, ſo *Iſrael* departed to their Tents and Submitted to the Rule of *Jeroboam*, where Princes are willful, or ſlothful, and their favorites flatterers, or timeſervers, there needs no other inchantment to infatuate; yea, and ruine the greateſt Monarch.

1 King. 12. 3. 4. 13. 16.

Let us give Glory unto the Lord, who ha's aboliſhed the Pedagog of the Law, and brought us into the Glorious Liberty of the Goſpel, where now the Holy Spirit ha's brought us from a Carnal to a Spiritual Service. The command is ſhort: *Believe and be ſaved*, but what? Believe the promiſes made to *Adam* in Paradice, to *Abraham* in *Canaan*, the Tipes, Figures and Shadowes of, and in the Law of *Moſes*, the exultation of *David*, the predictions of the Prophets, the Viſion of *Symeon*, were all aſſuredly accompliſhed, in the birth of *Chriſt* thy *Saviour* and *Meſſias*; and next expreſs thy admiration, that this Sacred Truth ſhould yet remaine a Stumbling Block unto the *Jewes*, or unto any fooliſhneſs, after ſo many mentioned pregnant Teſtimonies, farther yet confirmed by the Magnificat of *Mary*, the Confeſſion and Confuſion of the Divel, the Atteſtation of Men, and Angels, and the Voice of God himſelf. We have not now under the new Chriſtian Adminiſtration, any expreſs Revelation, no inſpiration of a Prophet, no Unction of that Nature; as to the declaring of that Perſon, that is to Govern.

Only God has in general commanded and diſpoſed men to be Governed, and the perticular perſon Reignes according to that right more or leſs reſpectively, which under Gods Providence, he or his Predeceſſors have lawfully acquired over the Subject, and ſo is from God in a Providential Conſtitution, the nature of which is better and more reverently expreſſed by Princes (then ſome Divines who urge their *Jus Divinum*) by the Grace of God King &c.

'Tis undoubtedly enough that God ha's fortified him with a Divine law, that he may not be reſiſted, but his Adminiſtration is humane, neither is it poſſible either for him to exact, or men to pay him more than a Civil Obedience in the Lawes he Conſtitutes; for a human Law can create only a human Obligation, and unleſs the breach chance to be againſt ſome Divine Law, I cannot ſee but that the offender is guilty not to God,but only to the Magiſtrate, and ha's expiated his offence by undergoing the puniſhment: The commands of Obedience and Submiſſion are ſo firmly enjoyned, that I know but one diſpenſation from that General Rule, to Obey God rather than men (but then we muſt be Careful we do not forge our own warrant) in the 13 *Chapt.* to the *Romans* where the duty to the Magiſtrate is ſo fully deſcribed, and highly recommended, ti's never the leſs as to the Magiſtrate, ſaid he, is not a terror to the Good work's, but to the Evill; 'tis enough to believe the power of the Magiſtrate do's moſt certainly iſſue from the Divine Authority, and that the Obedience due to that power, is by Divine command. And as it is unlawful to palliate with God, and enervate his Law's into a human only, and politick conſideration; So it is on the other ſide unlawful, and unneceſſary to give to Common, and Civil conſtitutions a Divine Sanction, and it is ſo far from owning of Gods Juriſdiction, that it is an invaſion upon it. For it being demonſtrable that a Religion inſtituted upon juſtice, between Man and Man, love to one the other; Yea, even their enemies, Obedience to the Magiſtrate in all human and moral matters, without pretence or latitude for reſiſtance; cannot ſo long as it is true to it ſelf, in theſe things fall within the Magiſtrates juriſdiction: for while the Chriſtian keeps to theſe precepts of his duty, he cannot fall under any Jealouſie of State, as an ambitious and dangerous party, nor as a Malefactor upon any other account, deſerve to ſuffer under publick ſeverity, and in ſhort Chriſtianity rightly practiſed upon, it's own principles, would render all Magiſtracy Uſeleſs. The Monarch from an Ethnick, becoming Chriſtian was not inveſted with a greater power, nor the ſubjects Obedience Alter'd by their Government in Religion.

SO I come to my next conſideration of the particular Government of our own Kingdom.

AND here we may premiſe, that this Nation had never attained that happy temperature of Policy, that at this day guides it, were there not ſome *Primum mobile*, ſome finger of Divine providence that has ever kept one conſtant motion in all variety of ſtate tranſactions for though we muſt attribute the paſſing of many excellent Laws to divers of the wiſe and good Kings and Queens of this Realm (the proper work of the repreſentative body to form them) yet to no one or all of them can we aſcribe the honor of that wiſdom and goodneſs, that has hitherto continued to us the Enjoyment and Benefit of our Laws and Liberties.

THE Character of the brittiſh Government is dark. Monarchical it was, and we believe the Nation was improved extreamly by the Roman Conqueſt made upon that People, it made them tractable and Manſuet; it taught them Arts, and Learned them the Methods of Civility. It improved their Policy, and reduced their ſcatter'd Dominion and Strength into one Province, ſuffering them the enjoyment of their own Laws, ſaving their ſervice to their *Roman* Empire. *Sped.*55.4:

Succeding times grew worſe, the Empire was imbroiled, and the often Changes, and unruly alterations, did not moderately affect this ſtate; and tho the Clergy at that time began to be admired as Oracles (letting them ſway, what was free from the Cogniſance of the *Roman* Magiſtrate) and probably they then were buſie enough to frame their Synods, and Adopt them, the repreſentative Body of the Kingdom, In the mean while fettering the ſecular power, and tying the Arms of the civil Magiſtrate, at length their actings in their Synods, and Aſſemblyes; became liable to exception, being too much lifted up, or drawn aſide from the exerciſe of Juſtice or Religion. *Gildas.*

The *Roman* Weſtern Empire doomed to ruine, left the *Brittiſh* ſtate in ſo weak a poſture, it had not force ſufficient to defend it's liberty, or ſecure it's ſafety, reſolves to venture for a Cure which perhaps proved worſe than the diſeaſe. Invites the *Saxons* to their ſuccor, (who made the weakneſs of their

Hoſts the argument for their Uſurpation of the Government) they were a free People governed by Laws and thoſe made by their Voluntary Voting and Conſent, not ſubject to any Arbitrary Power, and thereupon were call'd Free.

Hiſto.Ger. Bacon *hiſto.* 15.

AT their firſt entry they defaced the ſplendor of the Brittiſh Church, and conſequently diveſted their Synods of their Power, introducing and intermining the Laws and Cuſtomes of their Country, for publick Obſervation in the Conſtitution of King, Lords, and People. But after they had entertained ſome glimmerings of Chriſtianity, *Auſtin* the *Monk* after call'd the *Saxon* Biſhop, was deputed from the See of *Rome*, to become as it were a third Proprietor with King and People, but could obtain no more than to preſerve a Moderation of the Municipal Laws towards the Cannon-Law. The *Saxon* Kings in the firſt exerciſe of Empire were too many and had not power beyond their Limits: The Churches Metropolitan was but one in all the *Saxon* Territories, ſo that he was ſtiled *alterius orbis papa*, and by degrees inveſted himſelf in the diſcharge of ſecular Affairs, till at laſt their Succeſſors claimed it as part of the buſineſs of their Office even to the Jealouſie of the Civil Power, for the *Saxon* Kings would never allow them power or preeminence above themſelves, or their Great Council; and though they claimed by virtue of the Cannons the immediate ſentence or diſquiſition in point of *Witchcraft*, *Baſtardy*, *Marriages*, &c. They never executed the ſame

L.l.Ethelſtan *cap.* 11. *coun. Brit.* 179.

by uninterrupted right, until they were thereto Authorized *per commune concilium, & aſſenſum omnium Epiſcoporum procerum comitum, & omnium ſapientum ſeniorum, & populorum totius Regni & per preceptum Regis:* And notwithſtanding all their pretences and deſigns to aggrandiſement, they obtained no admittance into the *Saxons Mickelmote* or *Wittagenmote* (the true Idea of our Parliament ſubſiſting of King, Nobles, and Freemen) for near 200 Years and it may be were then admitted as *Sapientes* not as *Prelates.* But a true inſtance of their deſign to controvert the Soveraign Power, may be collected from what they then promoted as current Divinity, and by artifice had made it a publick Law of State; that if the King defend not his People, and eſpecially the Churchmen from injury, *nec nomen Regis in eo conſtabit, verum nomen Regis perdit.* At laſt they grew moſt intollerable, exceeded all allowance, flew at the Throat of Government, depoſed and advanced even to the Royal Throne it ſelf; not only out of ſudden paſſion of State, but adviſedly concluded for a Maxim, that the Election of the King belonged to them, as in the caſe of the Election of *Maud* the Empreſs, they did declare to all the World: and in which King *Henry* the 2. did alſo flatter them, keeping them in reſtraint until they accorded to vote for the Election of his Son to be his Succeſſor.

Concil. Brit.

L.L. *Sax.* *Ed. Cap.* 17

Antiq. Brit. 150.
Ibid. 145.
Ibid. 127.

IT was then full time to regulate their inſolence and ambition, and to that purpoſe about that time and after were the Common

Laws and antient Cuſtomes reinforced in that we call the Conſtitutions of *Clarendon*, which it may be are not ſo properly termed Statutes or Acts of Parliament, as Judgments in the great Counſel of the King and Peers, declaratory of what was antient Law and then promulged to fix limits to their diſorder.

BUT to return, in this great Counſel of the *Wittangemote* in the *Saxons* time were tranſacted thoſe we now call *Ardua Regni* in matters of Peace and War, Matters of publick defence and General Charge to do right according to Law and Cuſtome, more eſpecially to prevent injury by the King Queen and their Children; in ſhort it was a Court of General uſe and unlimited extent made to riſe and ſtoop according to occaſion.

L. L. Lam. laws ub. fol. 36. Leg. Ed. Lamb. Camb. fol. 139. Mirror. cap 1. ſec. 3.

THIS Eſtabliſhment of the *Saxons* was firſt aſſaulted and invaded by the *Danes*, who in their entrance ſhew'd much of the wrath of God and Man. Yet trenched not upon the Fundamentals of the Peoples Laws or Liberties; and after three of the *Daniſh* race for ſome ſhort time had worn the *Diadem*, it reverted once again under the *Saxon* rule, until at length this antient famous Monarchy devolved into the poſſeſſion of the *Normans*, entring this Iſland under the conduct of *William* Duke of *Normandy*, who put a Period to the other Dynaſty and has left us to diſpute how to reſolve his claim.

SOME building their opinions on paſſionate notes of angry Writers inveſt him with the title of a Conqueror, and thence infer ſtrange Aphoriſmes of State deſtructive to the Government of this Kingdom.

IN order to evince the contrary, conſider.

Mat. Paris p. 1. *Antiq. Britt. Eccles.* 76.

1. That he pretended other claim and title as Couſin and Heir to the Confeſſor.

2. As deſigned Succeſſor to the Confeſſor by his will, confirmed by the conſent and election of the Nobility, and of *Harrold* himſelf who in aſſurance promiſed his Siſter to the Duke in Marriage, the Pope on reference allowing of his claim againſt *Harrold* his Competitor.

Hoveden *Eadm. Hiſt. li.* 1. *cap.* 13. Mat. *paris in vit. Gul.* Bacon. 116

3. His Coronation was ſolemnized after the antient manner, where he made a ſolemn Covenant with the People to obſerve thoſe Laws which were *bonæ, approbatæ & antiquæ Leges Regni*, to defend the Church and Church-men, to govern all the People juſtly, to make and maintain righteous Laws and to Inhibit all Spoyle and unjuſt Judgment. The People ſtipulated for their fealty: That as well within the Land as without, they would be faithful to King *William*, and in all places with all fidelity to keep his Lands and Honors, together with him and againſt all Enemies and Strangers to defend, which agreed with the tenor of the *Saxon* fealty only was ſumm'd up in fewer Figures.

L.L. *Inæ. Lamb. Sec temp.* O Eliz.

4. Beſides the Oath of fealty he eſtabliſhed a Law of Aſſotiation that all Freemen ſhould be ſworn Brethren, to defend the Kingdom with their Lives and Fortunes againſt all Enemies to the uttermoſt of their Power. 2. To keep the peace and digni-

ties of the Crown. 3. To maintain Right and Juſtice by all means without delay, and was ſo far from uſing the Power of a Conquerour, or Acting by the ſole Dictates of his own pleaſure, that he commended the Laws of the Confeſſor to his Juſtices, in the ſame Language they were wont formerly to be written, leaſt through ignorance the people raſhly might offend. 'Tis farther atteſted by another Author, the King had a deſire to Learn the *Engliſh Tongue*, that he might the better Know their Law, and Judg according thereunto.

Ingulph.

Mat. Patri. in frag. Guil.

5. In the fourth year after his Entry or Reign, he ſummoned a meeting of all the Nobility and Wiſe men to ſet down their Laws and Cuſtoms, which beſides the intention of Governing the Kingdom; according unto Law, doth ſtrongly portend that at that time he did allow the Legiſlative Power in the Parliament, in point of Right of Cogniſance and judicature in General,

Specil. Pa. 5. Litchfield. Chron.

6. The authority to introduce if not to Change Laws, that this Council had in his time, may appear in the Act made for introducing of the Cannon Law, which farther evidences their authority in Church affaires, and that the Cannons had no influence but what they would allow them.

Spiceleg. 167.

Fox Martin lib. 4.

7. In matters of General Charge the King uſed the advice of this Council, as may appear by the Kings own Laws, in the Charge of armes laid upon the ſubject.

Ll. Guil. Cap. 58. Spicil.

8. In the Clauſe of Reſervation of the free ſervices of the Freemen of the Kingdom,

Ll. Guil. Cap. 55.

dom, they were made only to himſelf, and in Concluſion; ſaith, that their Lands were thus granted to them in inheritance of the King by the Common Council of the whole Kingdom. And ſo in one Act aſſerts the liberty of the Freemen, and of the repreſentative body of the Realm; ſo that however Conqueror this King was, he yet made uſe of the additional Power of Parliaments to perfect his deſigns, to ſecure his Claim; and to quiet the jealouſies of the People; ſo that if at any time the unquietneſs of the People brought the King to ſome thoughts of Arbitrary tule, and to ſhake off the Clog of *Saxon* Law; it was long er'e it ſtirr'd, and ſprang up too late to raiſe the title of Conqueſt, and witherd too ſoone to ſettle it. Nor were they Compellable to any other ſervice inconſiſtent with, nor to ſtand to any judgment different from, or contrary to, that of the Parliament it ſelf. So that the *Engliſh* man
Sp. 55. 4. Enjoyed this threefold Freedom. 1. In the ownerſhip of what he hath; 2. In voting any Law whereby that ownerſhip is to be maintained. 3. In having an influence upon the Judicatory Power that muſt apply it.

NOW If we but ſummarily follow the rule of the Lord Cook, (*judicis officium eſt ut res ita tempora rerum quarere*) we ſhall find 1, the Being or Original of our Parliament, to be very antient and unqueſtionable in ſubſtance, form and all neceſſary adjuncts. *Mulmutius* of ſome Call'd *Donwallow* *wallo* did write two bookes of the Laws of the *Britains.* The one call'd *Statuta Municipalia,* the other *Leges Judicialia* (ſo they import in the *Brittiſh* Dialect, and may not improperly be Engliſhed the ſtatute and Common Laws) 441. Years before the Incarnation. In the Heptarchy of the *Saxons* they had their continuance, as in the ſtile of the Parliaments of *Jna* King of *W. Sax*: *Offa Merc. Ethelſtan* of *Kent*; *hac ſunt judicia exonia, qua ſapientes Conſilio* Athalſtani *inſtituerunt, & iterum apud* Frefreſham, *& iterum apud ---- ubi hac definita ſimul, & confirmata ſunt* This Parliament as appears, was ſummon'd *Conſilio Regis*; Prorogued in theſe words *iterum & tertia vice*; The Royal aſſent expreſt by *Confirmata ſunt*, and their diſſolution *Definita ſunt.*

THE *Saxons* had their Parliament as we, and their new Laws were made. *Cum conſenſu pralatorum Magnatum ac Totius communitatis*; or as others, *cum conſilio Pralatorum Nobilium & ſapientum Laicorum.* They call'd that great Aſſembly by ſeveral Names or Compellations, their *Mielemote* their *Wittagenmote prudentum conventus concilium*; *magnum concilium* &c. But after the entry of the *Normans, vetuſto nomine*; *ex* Gallia *mutato Parliamentum dicitur.*

AND Though the Book of *Litchfeild* ſayes, of the troubleſome times of the *Danes*, that then, *jus ſopitum erat in Regno Leges & conſuetudines ſopita ſunt & prava voluntas vis & violentia magis quam Judicia; vol Juſtitia* **Litchfield Chron.**

actitate fuerant; yet by the Bleſſing of God and a Good King (Commonly called St. *Edward*) the Laws were awakened, *exitatas reperavit reparatas decoravit, decoratas confirmavit*, which ſhowes the Good King *Edward* did not Originally give thoſe Laws, which *William* the conqueror, and his ſucceſſors have ſworne unto.

Ranulp. Ceſtr. l. 1. cap 50. Coo. 4. Juſt. 457. 193.

Moreover in their time we find the Parliament, of King Canutus bore this Title. *Hæc ſunt ſtatuta Canuti Regis Anglorum, Danorum, Norwegorum venerando ejus ſapientum Conſilio ad Laudem & Gloriam Dei ac ſui regalitatem & commune commodum habito in ſancto Natali Domino apud Winton.*

9. Ed. 2.

So that the Words of the 9. *Ed.* 2. *Sciatis quod quum dudum temporibus progenitorum noſtrorum quondam Regum Anglia in diverſis Parliamentis ſuis* &c. Were not meant of the Eſtabliſhment of his immediate predeceſſor, for then *dudum, & progenitorum temporibus*, would have been incongruous and improperly applied: So that we may apply fitly the rule of *Fortiſcue*, *Regum noſtrum in omnibus Nationum & Regnum temporibus, eiſdem quibus nunc regitur legibus & conſuetudinibus regebatur, ut qui ſub uno Rege ſub una Lege Regerentur.* And having evinc'd this firſt thing by preſidents which tho in themſelves they are not of authority and proof to overthrow any new Law. yet they are good *Media* or prooſes of illuſtration or confirmation, when they agree with the Text, and expreſs letter of the Law.

Forteſcue de Dom. Pol. & Regal.

Alſo lib. Litchfield.

We will in ſhort, Secondly Conſider the ends of the Being of Parliaments. Firſt, which are *Subditos delinquendo declinandos. Hoc eſt ut dilicta tam bonis Cautiſque legibus tam debita eorundem executione anticiparentur.* L. Cook.

2. *Ut tuta tranquillaque ſit vita hominum.*

3. *Ut fixis quibuſdam ſanctionibus ſanctiſque Judiciis jus unicuique fieret.* Fl. 12.

4. *Terminare dubitationes Judiciorum novis injurijs immerſis nova conſtituere remedia unicuique prout meruerit juſtitiam retribuere.* Accordingly the ſtatute of *Marlbrid: proviſum eſt concordatum & conſeſſum quod tam majores quam minores juſtitiam habeant & recipiant in Curia Domini Regis.* 52. H. 3. Marl. This may be ſufficient in this place to explain the General ends of it's Inſtitution. We are in the third place to diſcourſe of the POWER of the Parliament, to ſerve thoſe ends, which *Power* is threefold.

AND Firſt as it is the great Council of the Kingdom, what Rights and Power it hath under that Notion.

2. As it is the moſt ſupream Court of Judicature of the Nation and What matters come within it's Power and Cognizance as ſuch.

3. As it is the high and only Legiſlative Power of the Kingdom, and therein more particularly of the unlimited tranſcendency of it's influence and authority in occurrences of higheſt Concern of the Imperial

3 *Juſt.*

Crown and Realm, ſaying with the Lord Cook: *Si vetuſtatem ſpectes eſt antiquiſſima ſi dignitatem eſt honoratiſſima ſi Juriſdictionem eſt Capaciſſima,* For the extent of it's Power take this General rule.

5. *Ed.* 3.
par. rol.
par. 1.
Mem. 25,
Par. rol.
H. 3. 30.
Mem, 1.
23. *H* 8.
Cap. 1. 4.
H 5.*Cap* 6
Rec.Tew.
42. *Ed.* 3.
Mem. 20.
d----a.
25.H.8.12
*Co.*4 *Inſt.*
Tit. Ireland,

All places that are in ſubjection to the *Crown* of *England*, are ſubordinate to the Juriſdiction of the Parliament, as in the Caſe of *Ireland, quia* &c. *Rex vult quod omnia brenia de Communi Jure qua currant in Anglia ſimiliter currant in Hibernia* &c. *Vt per eaſdcm leges eos Rcgi & Deduci permittant & in omnibns ſequantur.* That Law and Juſtice, *eadem ſit tam Hibernicis quam Anglicis*, and that it ſhall be held as a Crown united to the Crown of *England*, and the Acts of that Kingdom have been confirmed in this, and General Laws ſhall there take place as if *Ireland* were particularly named.

*In Parl.*33
*Ed.*1.Plea
de Inſu.
Jerſey.
34.*Ed.*2.
27. *H.* 8.
Cap. 26.

The Parliament of *England*, have held Plea, and determined all Cauſes of Lands and Goods in the Iſles of *Jerſey* and *Guernſey*, part of the *Dutchy* of *Normondy*, and of our other territories, whilſt we had any footing and poſſeſſion in the Realm of France, and Committees have been appcinted for Peticions in their Aſſemblys of parliament Alſo in Temp. Henry the 8. Law and Juſtice was ſetled by Parliament to be adminiſtred in *Wales* as in this Kingdom &c. but before we diſcourſe of the Parliamentary power according to the former diſtribution, *viz.* of thoſe things that are the objects thereof.

We may Juſtly give this honor to our Nation, that no Conqueror ever impoſed his *new*, to the aboliſhing its ancient Laws. And it's undoubtedly with States as with Families, and Perſons, an uninterrupted Pedegree doth give luſture.

Moribus antiquis ſtat res Romana virique.

Privilegium amittit qui imbrobabili temeritate quod non accepit uſurpat, & ſua authoritate non legitime utitur ſed abutitur poteſtate.. Gratian.

IT will be neceſſary at our Entry to the following Matters, to give an account, by way of Repetition, of the conſtituent parts of our Government; and that I may the more effectually and the freer from diſpute perform, I ſhall give the Definition in the words of the moſt diſcerning Judge, the ever renowned King *Charles* the martyr, (the Diſaſters of which unfortunate Prince, the Age can never enough lament, who ſubmitting the unerring Sentiments and Dictates of his own Soul to be acted by the ill methods of weaker and worſe Counſel, ſuffered) may his royal Succeſſor avoid even the Jealouſies of a ſecond error; he thus expreſſeth it, That it is a Government under a regulated Monarch, the Legiſlative Power being placed in the three Eſtates, King, Lords, and Commons; and ſo long as the ballance hangs even between theſe three, and they keep within the due exerciſe of their Rights and Priviledges, all the Inconveniences incident to all other Governments, are provided againſt and ſecured: the binding Laws to this Kingdom are joyntly made by all three, and the Government according to theſe Laws, entruſted with the King.

Anſwer to the 19 propoſit.

D Here

Here is *multum in parvo*, every ſyllable of Weight and Moment, and when juſtly diſtributed, it ſhews.

1. The King is not *Sui Juris*, he is intruſted with his Power; for under a free and untutor'd Monarch, the nobleſt, worthyeſt, and moſt prudent men, with full Approbation and Suffrage of the people, have in their Power the ſupream and final determination of higheſt Affairs, *Quod principi placet legis habet vigorem, eas ſcilicet quas ſuper dubiis in conſilio diffiniendis procerum quidem conſilio, & principis accidente authoritate conſtat eſſe promulgatus.* The diſtribution of Juſtice, the Treaties of Peace and War, the Power of making Peers, of chuſing Officers, and Counſellors for State, Judges for Law, Commanders for Forts and Caſtles, giving Commiſſions for raiſing men, to make War abroad, or to prevent and provide againſt Inſurrections and Invaſions at home, Benefit of Confiſcations, are Royalties belonging to the Monarch, *&c.* For it is beyond queſtion, reaſonable, that the Magiſtrate whoſe charge it is to ſee to our Perſons and Eſtates, is to be honoured with moſt elaborate and perſonal Courtſhip, and with large Sallaries and Stipends, that he himſelf may abound in thoſe things, whereof his legal Juſtice and watchful Care gives us the quiet Enjoyment; ſo that both by Cuſtom and Conſent of Parliament his Prerogative is highly favoured and adjuſted: for the Kings Prerogatives are rather beſides the Law than againſt it, and when they are directed to right ends for publick good, they are not only concurring Laws, but even Laws in Singularity and Excellency.

Ran. Glan. temp.*H.*2.

Anſwer to 19 Propoſit.

But ſovereign power is a thing ſo ſacred, that to handle it otherwiſe than tenderly may tend to Sacriledge, and to ſpeak of it otherwiſe than reverently, a kind of Blaſphemy; and becauſe vulgar Capacities are not affected to judge of things to their intrinſick Quality and Vertue, I ſhall be ſparing in this point, gratifying therein my own Opinion, that ſovereign Power is beſt when had in tacit Veneration, than when it is prophaned by publick reaſoning Diſcourſe or Argument, ſo ſhall proceed to obſerve,

2. That the people have Rights and Priviledges.

3. That all together,only in Parliament,have power of making, binding Laws.

4. That the Government according to theſe Laws is intruſted with the King.

5. That all and every of theſe are under Obligation joyntly and ſeverally in their reſpective Capacities of Adminiſtration, to take care to provide for the publick Weal and Safety, *Ne reſpublica detrimentum capiat.* Our Predeceſſors had ſo ineſtimable a value of, and Kindneſs for our *Engliſh* Liberties, that they would not truſt their Guardianſhip with any under Heaven, but themſelves; Nay, though their Kings obliged themſelves by ſolemn Oath upon the Sacrament at their Coronation, *Quod eccleſia dei populuſque Chriſtianus veram pacem in omni tempore ſervent, Quod rapacitates, & omnes Iniquitates, omnibus gradibus interdicent, quod in omnibus judiciis equitatem & miſericordiam precipient, Quod perverſis legibus diſtractus bonas ſubſtituerent, & rectam juſtitiam in regno* Angliæ *excercerent, & quod ea quæ contra leges acta erant non ſolum pro minutillibus,*

ſed eiam pro ſolutis habenda erant: yet for more
Caution, and a conſtant Aſſurance, and perpetual
Satisfaction, that their Liberties and Rights
25 Ed. 3. were not invaded nor infringed, they procured
províſ. not only this early Eſtabliſhment of *Edw.* 3. for
4 Ed. 3. 5 Ed. 3. frequent Parliaments (but diverſe others) where-
36 Ed. 3. by the King is bound by his Oath, to paſs all Laws
10. that are for the good of his Kingdom, that for
1 *Rich.* 2. the maintenance of the ſaid Liberties, and reme-
n. 95. dies of Miſchief and Grievances that daily happen,
a Parliament ſhall be held once every year,
which Law was the 16 *Car.* 1. in the Act for
16 *Car.* 1. the triennial Parliament, declared to be in force;
and after in the 16 *Car.* 2. in the act for repealing
of the former, it is recited, and becauſe by
the ancient Laws and Statutes of this Realm,
made in the Reign of King *Edw.* the Third,
Inter leg. Parliaments were to be held very often. This
Edgar. Law of King *Edw.* ſomewhat in Abridgement
cap. 5. of the uſage in the time of King *Edgar*, before
the Conqueſt, which ordained, *Celeberrimus autem
ex omni ſatrapia bis quotannis conventus agitur.*
And it may be, this laſt was founded upon their
dear bought Experience, and their Predeceſſors
Ruines in the want of Parliaments, according to
Tacitus in *Tacitus*, *Nec aliud adverſus validiſſimas gentes pro*
vit. Agric. *nobis utilius, quam quod in Communi non conſu-*
206. *lunt rarus ad propulſandam commune periculum conventus,
ita dum ſinguli pugnant univerſi vincuntur.*

And that theſe Liberties of the People, were
not as is ſometimes objected (by the Maligners
of *Magna Charta*, and the peoples Birth-right)
obtained by high hand, irregular, and rebellious
1 Hen. 4. Practices: beſides what is before alledged,
Rot. Parl. I find them acknowledged by King *Hen.* 4. It
n. 93. was

was not the King's Will that any ſhould think, that by way of Conqueſt he would govern, or diſinherit any man of his Inheritance, franchiſe or other Right which he ought to have, nor out any man of what he had, or ſhould have, by the good Laws and Cuſtoms of the Realm.

Alſo, long before which time, I find them more at large expreſſed by *Henry* the firſt, in his Parliamentary Council held at *London*, 1106. *Ego vero Rex humilis & pacificus, vos in pace in antiquis libertatibus veſtris, prout crebrius jurejurando promiſi, geſtio confovere, & veſtris inclinando Conſiliis, Conſultius ac mitius more, manſueti principis, ſapienter gubernare, & ſuper his ſi provideritis ſcripta ſubarata roborare, & iteratis juramentis prædicta certiſſime confirmare, omnia videlicet que ſanctus Rex* Edvardus, *Deo inſpirante provide ſancivit, inviolabiliter jubeo obſervari.* The Charter of this King was produced by the Arch-Biſhop of *Cant.* in the 15. of King *John*, in his Parliament at *Windſor*, where they then renewed their claim, to have it ratified.

Mat. Paris pag. 95.

It appears by the foregoing Preſident, 1. That the Priviledges and Liberties of the people, were acknowledged to be ancient, and their right ; at leaſt in the time of the Confeſſor, called King *Edward's* Laws: not that he made them, *Sed quia ex tribus legibus, Anglorum, Danorum, & Merciorum, unam legem communem edidit.*

Ranulp. Ceſtr. lib. 1. *cap.* 50. *Cook* 4. *Inſ.* 193.

2. That the King had frequently ſworn, and would command their Obſervation.

3. He did acknowledge that acting with their Adviſe, he ſhould rule and govern with more Wiſdom, Safety, and Moderation, according to the ſaying of *Ph. Commines.*

Phil. Com. lib. 5. *f.* 233.

Interveniente populi voluntate & aſſenſu, creſcit robur & potentia regum, & major eſt ipſorum authoritas & feliciores progreſſus.

The particular Priviledges of the two Houſes are deſcribed in an Anſwer to a Petition of the Commons, 1 *H.* 4. That the King and Lords from all times have had and ſhall have of Right the Judgment in Parliament, *Saving*, that in Statutes to be made, or in Grants or Subſidies, or in ſuch things as are to be done for the common profit of the Realm, the King will have eſpecially the Adviſe and Conſent of the Commons.

1 Hen. 4. *Rot. Parl. n.* 79.

It is to be noted, that a *Saving* in an Act of Parliament, does not create a thing *de novo*, only confirms that which was *in eſſe* before.

But that you may better comprehend what I mean by the Term Parliament, with reference to this great end, the publick good, for Methods ſake, I will diſtinctly, and hope, warrantably, conſider it to have a threefold Signification and Import.

1. As it is the great Counſel of the Kindom, to treat, adviſe, and conſult, *de arduis regni*, and then it may be underſtood or meant of all three Eſtates, the two Houſes, or one of them.

2. As it is the higheſt and moſt general Court of Judicature, then only of the King and Lords (unleſs in the diſcerning of the Priviledges of the lower Houſe and of their Members, which lyes before themſelves) and of matters that paſs by Bill, which falls in the third Definition properly.

3. As it is the Legiſlative Power, then it is only entirely, and not to be admitted in fewer than all the three Eſtates, joyntly, King, Lords, and Commons.

The manner of the Parliamentary Proceedings was either joyntly with the King, or without him; and either joyntly by the two Houſes, as always in the matter of money, or where Gain ariſeth to the Crown by Grant or Subſidy, it moves from both, or elſe by each houſe ſeparately, and that ſometimes immediately by themſelves, ſometimes by their Committees.

They will yet be more familiar and better apprehended, if we conſider,

1. What matters of Fact have paſs'd from the King to the two Houſes for Debate, Counſel, and Conſent, which were moſtly for Proviſion or Prevention.

2. What Reſults of both or either Houſe, have mov'd to or with the King, thoſe concern Liberty, property, or a mixture of both, call'd Grievance.

3. That in ſome great and weighty caſes, they have acted all together.

But becauſe theſe Rules will be better underſtood by applying of Examples, we wlll take a view of the Imports of their general Writs of Summons: Secondly, of their particular Summons, that according to occaſion did expreſs the Reaſons of their Meeting. The Form of their general Summons runs, *Rex*, &c. *Quia nos de adviſamento & aſſenſu Concilii noſtri, pro quibuſdam arduis & urgentibus regni negotiis nos ſtatum & defenſionem, Regni noſtri* Angliæ, *& eccleſie* Anglicane, *concernentibus quoddam Parliamentum apud*, &c. *teneri ordinavimus & ibidem cum prelatis* &c. *dicti regni noſtri Colloquium habere & tractatum* &c. *eligi faceres* &c. *ad faciendum & conſentiendum hiis que tunc ibidem de communi* *conſilio noſtro Anglie contigerint ordinari ſuper negotiis antedictis. Ita quod pro defectum poteſtatis hujuſmodi, ſeu propter improvidam electionem* &c. *dicta negotia noſtra infecta non remanent quoviſmodo.*

The matters that are naturally obſervable from this Writ, are,

1. That the King ſummons them, *Adviſamento & aſſenſu concilii*, ſo that he rules not *mero Imperio*, but, in the Intervals of Parliament, acts by and with the Advice and Aſſent of his leſſer Counſel.

Cook 3. *Inſt.* 14. 2. They were to aſſemble upon certain difficult mattters inſerted and expreſſed in their Writs of Summons: which in the general, concerns his royal Perſon, his State and Government, the Safety and Defence of the Church and Nation.

4 Hen.8.8. 3. They were to have freedom of Election, Debate and Vote: the bringing Force to overawe the Parliament, not only made the Parliamentary Proceeding to be rend'red ineffectual, but inhanc'd the charge in the Articles againſt *Rich.* 2.

4. The Repreſentatives were to be fully impower'd to conſent to and ratifie what ſhould only be agreed in that common Counſel.

5. That without ſuch Power, the parliamentary Buſineſs could not be made perfect or conſummate.

But ſecondly, Theſe *ardua Regni* will better diſcover themſelves, and have a more punctual Explanation, if we make ſome ſhort collection of matters and particular Clauſes, occaſionally inſerted into their Writs of Summons: ſo that we ſhall ſee what things have been exhibited to

them, as proper for their Cogniſance, and as
matters that deſerved their Counſel. *Cum* Edvardns 49 Hen. 3.
primogenitus noſter obſes ſuper deliberatione m. 11. d.
ejuſdem ſalubriter providenda, & plena ſecuritate,
& tranquillitate pacis, & utilitatem totius Regni
firmanda &c. *totaliter complenda*——— for remedying 23 Ed. 1.
the dangers that impend the Kingdom, m.4.d.
and to obviate the ſame-—To enable the King to 24 Ed. 1.
make Wars for the recovery of *Gaſcoyne* ſurprized m.4.d.
by the *French* King———*Pro negotiis tranſmarinis* 97 Ed. 1.
ad Salvationem Coronæ noſtræ & utilitatem
communem regni noſtri——*ſuper humationem corporis* 1 Ed. 2.
regis Edvardi *genitoris noſtri* &c. *Quam ſuper ſolemnizationem* m. 19.
noſtrarum ſponſalium & Coronationis noſtræ
celebrand--—The *Scots* had broken League, 2 Ed. 2.
committed Hoſtility, and made an Invaſion upon m.20.d.
us, *nos dictorum* Scotorum *proterviam & nequitiam* 3 Ed. 2.
hujuſmodi, cum dei auxilio deprimere cupientes idem.
&c. *& ſuper premiſſis finaliter pertractand. vos* 6 Ed. 2.
una nobiſcum opportunas vires extendere——*expeditionem* idem. 6 Ed. 2.
Guerræ noſtræ Scotiæ *ſpecialiter tangentibus* m. 3. d.
——Concerning ſomething that remained undetermined
or unreſolved in the laſt Parliament
——to adviſe if he ſhould continue with 7 Ed. 2.
his Army at *Newcaſtle*, to repreſs the *Scots* upon
any occaſion of Offence that might be offered 16 Ed. 2.
——Concerning his Paſſage into *France*, to 18 Ed. 2.
defend his Territories and Dominion againſt the
Invaſion or Uſurpation of the *French* King——
To prevent an Invaſion from *Scotland*, and to 1 Ed. 3.
give a diſpatch to ſome things left undone by
the foregoing Parliament, by reaſon of the Abſence
of the Members———About his Expedition 6 Ed. 3.
into the Holy land, as alſo about the affairs
of *Ireland*———To provide for the Qui- 12 Ed. 3.

et of the Realm, during his Abſence in foreign
parts, in an expedition begun by their Ad-
14 Ed. 3. vice———To ſhew them the Reaſons why he
inſerted and added to his Stile, the Title of King
of *France*, to give them Satisfaction, that it
ſhould not be in prejudice to the State, and right
of the *Engliſh* Nation, but rather for Honour
16 Ed. 3. and Advantage———*Quia ſub ſpe felicis exitus*
18 Ed. 3. *agimus in remotis, veſtrum habere velemus auxili-*
um, & Concilium providum, & feſtinum pro neceſ-
21 Ed. 3. *ſario & ſalubre regimine regni noſtri* Angl. *Quod*
dictum Parliamentum non ad auxilla ſeu tallagia à
populo dicti regni noſtri petenda, vel alia onera ei-
dem populo imponenda, ſed duntaxat pro juſtitia
ipſi populo noſtro, ſuper damnis & gravaminibus in-
34 Ed. 3. *ferenda*———*Statum & bonum regimen*———
47 Ed. 3. *Qui in navigio & exercitio merchandizorum notiti-*
3 Hen. 6. *am habent meliorem*———*Qui nos jam dum in*
annis degimus teneris an pax & juſtitia ubilibet in-
ter legeos noſtros debite conſervantur & exhibeantur,
necne, decrevimus expedire.

I need not enlarge to make any further Citation offered to the Debate and Conſideration of this great Counſel, you have the *ardua & urgentia regni*, atteſted and explained in the foregoing Preſidents, and they are ſuch as concern,

1. The Honour of the Kings ſacred perſon, the Inhumation of his Father, the ſolemnizing of his Nuptials, or his Coronation, for the Redemption of his Son in Hoſtage, or for the making an Addition to his Royal Stile and Title.

2. For the ſecuring Peace abroad by giving an account of Leagues, Wars, Expeditions, Invaſions, for raiſing or continuing Force

according to Occaſions, and publick Rules of Policy.

3. For ſecuring Peace at home, more particularly in the Kings Abſence, as may appear by this Clauſe inſerted into the Summons, *Scituri quod gratitudinem & ingratitudinem quas nobis in abſentia noſtra jam oſtendi contingere, pluſponderabimus, quam ſi fuerant dum preſentes eſſemus, & ea curabimus juxta merita ſeu demerita compenſare.*

16 Ed. 3. *p.* 2. *n.* 22.

4. To adviſe concerning the raiſing of an Army, and after, farther to conſult of the Expediency, whether it ſhould be continued, or reduced.

5. That they might provide wholſome Laws for themſelves, without any deſign to raiſe Money, or impoſe Taxes, and to have Remedies for all illegal and male Adminiſtration, the Clauſes too ſeldom inſerted into thoſe Writs, too rarely made the buſineſs of the Parliament, and oftener wanted and complain'd for, than ſupplyed, or remedyed.

So that by the foregoing Inſtances 'tis apparent, our Kings, in all Affairs of Weight and Moment, acted with the Approbation and Adviſe of his great Counſel,and eſteem'd that way moſt advantageous.

1. To their State and Prerogative, to intereſt them in their Diſpatch, *Nam quod omnes tangit ut ab omnibus approbetur, & ut communibus periculis per remedia proviſa communiter obvietur, & quod proviſa jacula minus lædent, & res veſtra ſicut ceterorum ejuſdem regni communiter agitur in hac parte ideo,* &c. *ad tractandum ordinandum & faciendum qualiter ſit hujuſmodi periculis & excogitatis*

24 Ed. 1. *brev.*
1 Hen. 4. *brev.*

malitiis per remedia Communia ſit obviandum & hoc ſicut nos & honorem noſtrum, &c.

Speech H. 1. *prim.* 29 Ed. 3.

2. For their Security, better Diſpatch, and Safety, *Quia expedit quod predicta negotia, que Salvationem & Defenſionem dicti regni noſtri ſic contingunt ſalubriter & efficaciter, cum bona & matura deliberatione deducuntur & ut hujuſmodi propoſitum noſtrum felicem ſortiatur effectum.*

'Tis here objected, that this Intercourſe was of Favour and Complement, not from Neceſſity and Right; to which I anſwer.

Ed. 3. 1 H. 4. *Rot. Parl.* 2 Hen. 5.

1. That the King was both obliged by the Stat. of *Edw.* 3. aforementioned, and divers others, to call a Parliament yearly for the maintenance of Liberty, the remedying of Miſchiefs and Grievances, and becauſe that by the 1 *H.*4. 'tis agreed, that in all Statutes to be made for the general Good of the Realm, the King will eſpecially have the Adviſe and Conſent of the Commons; and the Reaſon is declared in an other Law, becauſe the Commons have Right to vote and aſſent to all things for publick good, in Parliament.

1 Hen. 4. 3 Ed. 2. Fortiſc. 36. *Neque rex tallagia aut alia*, &c. *imponit, ſine conceſſione totius regni in Parliamento.*

2. Becauſe the King could not aſſeſs or demand Aid or Supply in any Extremity of Occaſion, without Aſſent in Parliament: and let it be regularly obſerved, that they parted not with any Supplies of Money, until they were adviſed of, and had agreed to the occaſion of it's uſe, and ſometimes did depoſite it in particular Cuſtody, or appropriate it to ſpecial Uſe, which the King could not invade or alter, without Conſent in Parliament; And if it be allowed that the immediate, primary, viſible Power, is in the King

of making Peace or War, ſtrikeing Leagues, *&c.* Yet if the Parliament were unſatisfyed of the Expediency, or unconſulted in the firſt Motions or Occaſions, they frequently denyed Supplies of men or Money, as by ſeveral Authoriries interſperſed in the Diſcourſe is evidently manifeſt: and though the Commiſſions in thoſe Occaſions iſſue from the King, yet the Parliament gives the Life and Power to that Commiſſion: and
be it a Commiſſion for Peace or War, for Land 18 Hen. 6.
or Sea, it owes it's Succour and Encouragement C. 18. 19.
to that Power, and the Exorbitances of Perſons 4 Hen. 5. C. 7.&c.
ſo Commiſſionated, have ever been regulated by 7 Hen. 7.
that Power, as in the great number of Laws C. 1.
made to that purpoſe, may and will appear: 3 Hen. 8.
They added this farther Condition frequently C. 5.
before they opened the Nations Purſe, to have their Grievances diſcharg'd, *Le Roy pria d'aver une ayde de ſa terre & les bons gens grantera au Roy le* 25 *denier par cien Condition qu'il meiſt Conſeil & remedie en les articles auandits.* Amongſt others, they complain'd the King's Miniſters took their Goods without their Allowance or Conſent, that his Officers impoſed and took new Cuſtoms upon Wines, that the King had by his Proclamation advanc'd his Coyn beyond it's intrinſick Valew and Eſteem, that none would or durſt receive Petitions of their Complaints in Parliament, That Protections were granted whereby the Subjects were defrauded and delay'd of his juſt Remedy by Law, that notorious Offenders in Felonies were pardoned, and on ſlight and eaſie Terms, forgiven, whereby the Juſtice of the Kingdom, became perverted, all which were promiſed to be remedyed according to the ancient

cient Laws of the Kingdom, the next Parliament, and accordingly it decreed, that only the King's ancient Cuſtoms ſhould be continued, Protections to none allowed, but ſuch as were neceſſitated to be in the Foreign Wars, nor Pardons, but to Homicide by miſadventure, or *ſe defendendo, &c.*

Brev. 29 *Ed.* 3. Spee. *Car.* 1. *July* 41. *ante.*

3. Becauſe the King did not take upon himſelf ſingly to oppoſe or diſpatch thoſe before-mention'd, nor any other extraordinary Emergencies of State, *inconſulto Parliamento, Quia expedit quod negotia prædicta quæ ſalvationem & defenſionem dicti Regni noſtræ Angliæ ſic contingunt ſalubriter & efficaciter cum bona & matura deliberatione deducuntur, ſcilicet, juxta Conſilium Convocatorum, & quia radix & vertex Imperii in obedientium Conſenſu ſita ſunt.*

14 *Ed.* 3. p.1.*m.*3.*d.* Dier 94. Our King ſtil'd *Defender of the Faith, per* 35*H.*8. cap. 3. not by the *Popes* grant or revocation.

Rot. Parl. 35 *H.* 8. for the ſtile of King of *Ireland.*

4. Becauſe the King's Actings were only probationary, when the Publick Safety was in hazard, until adjuſted by the Conſent of this Great Council. *Non mirantes ex hoc quod ſtilum noſtrum Conſuetum mutavimus, & Regem Franciæ nos faciamus nominari, jam diverſæ ſubſunt Cauſæ per quas hoc facere, neceſſario nos oportet, & quas Communitatibus ejuſdem Regni noſtri Angliæ ad dictum Parliamentum plenius exponeremus. Scientes inſuper, quod nolumus nec intentionis noſtræ exiſtit, quod ex aſſumptione nominis & honoris eorundem prejudicietur aut aliqualiter derogetur, ſed quod idem Regno uberius ſubveniatur, aut relevetur maturius, illud idem & pro ſecuritate in hac parte, ad dictum Parliamentum, ſi opus fuerit, ordinabimus, quod juxta Conſilium veſtrum, ceterorumque Convocatorum viderimus opportunum.* The Parliament agreed the Title, but

for the Kingdom, it is too big to be garriſon'd by *England*, it will coſt *England* more to hold it than to have it. Take the words of the memorable Speech of Queen *Mary*, made in the *Guild Hall*, *London*, before the Lord Mayor and Citizens. And certainly, if I did either know *Speed* or think, that this Marriage, (*viz.* King *Philip*) *Chron.* ſhould either turn to the danger or loſs of any 1124. 35. of you, my loving Subjects, or to the detriment of any part of the Royal Eſtate of this *Engliſh* Realm, I would never conſent thereunto, neither would I ever marry whilſt I lived. And, in the Word of a Queen, I promiſe and aſſure you, that if it ſhall not probably appear before the Nobility and Commons in the High Court of Parliament, that this marriage ſhall be for the ſingular benefit and commodity of the whole Realm, that then I will not only abſtain from this Marriage, but alſo from any other.

And let it paſs for a Maxime, That a Kingdom is never more befool'd than in the ill Marriage of their King; evident in the marriages of *Richard* the Second, and *Henry* the Sixth, having thereby ruin'd themſelves, and, ſo far as poſſible, the Government of the Kingdom.

4. For that they were onely to treat of ſuch *Cook*, 4. matters of which they had been before adviſed, *Inſt.* 14. and, upon the overture of any thing newly propoſed, they might pray leave to adviſe with thoſe that ſent them, and by the uſage of Parliaments, deſire Conference with their Countreys.

5. For that for want of ſufficient Power in *Ibid.* the Repreſentatives, the matters to be treated of remained unattempted and unperformed.

6. That by reaſon of abſence, or inconſiderable appearance of the Members, the Affairs of the Nation could not, nor did not proceed: And they were warranted with Priviledges and Encouragements to enable them to make appearance. *Henry* the Third, *Anno* 1255. aſſembled his Parliament, to aſſiſt him with Supplies for his Wars in *Apulia*, but was denied. *Quod omnes tunc temporis non fuerant juxta tenorem Magnæ Chartæ ſummoniti, ſeu vocati, & ideo ſine paribus ſuis tunc abſentibus nullum voluerunt tunc reſponſum dare vel præſtare.*

Mat.Pariſ. 884.

20 *R.* 2. *n.* 8. The Commons required the King to ſend for ſuch Lords and Biſhops as were abſent, before they would enter upon the Buſineſs propounded to them.

2 *Car.* 1. 1626. It was reſolved, in the Caſe of the Earl of *Arundel*, that no Peer in time of Priviledge of Parliament, could be impriſoned, *&c.* or hindered from coming to the Parliament, without ſentence or Order of the Houſe, unleſs in Caſes of Felony or Treaſon, or in defalt of Surety for the Peace.

5 *R.*2. *c.*4. *Parl.* 2. The Precedents are numerous that juſtifie their Priviledge againſt pre-limited Elections, and that aſſert their unconſtrain'd Seſſion, and free Vote in Parliament.

St. Johns arg. Shipmon.p.38. The Parliament of the 21 *Rich.* 2. was revoked by the 1 of *H.* 4. becauſe the Commons were not elected *prout mos exigit*, *ſed ſecundum Regiam voluntatem*, and held *viris armatis & ſagittariis immenſis*, and becauſe the King ſummoned the Lords, *ex parte* only, *viz. Dominos ſibi adherentes.*

7. That to obviate and to prevent theſe miſchiefs, they were ſummoned by the ſtricteſt terms of Compellation, and urg'd by the moſt powerful Inſtances imaginable, *viz. Sicut ſtatum Defenſionem, bonum Regimen, commune Commodum, Ne quod abſit per veſtri abſentiam, Expeditio negotiorum noſtrorum retardatur, ſeu quovis modo differatur*; And two Manucaptors taken for the appearance of the Commoners *in majorem rei cautelam.* 11 *Ed.* 3.

2. 'Tis objected, the time for meeting and Prorogation are of Right in the King: to that I anſwer, That the King is obliged by the Laws to call a Parliament in ſuch a ſpace of time, as hath been before alledged, and is in this, as in all other matters of the Law, intruſted with the Executive Power, ſo that he has no unlimited Power, as to time, that being appointed and aſcertain'd by Law and Statute, he has only Power within that time to make an Aſſignation for their Seſſion; and for the power of Prorogation or Diſſolvtion, when it exceeds Moderation, Kings have been no more gainers by the exerciſe thereof, than angry men are by their Paſſions.

The Judges and Lawyers that gave their Opinion to King *Rich.* 2. that he might diſſolve his Parliament, and command his Lords and Commons to depart from thence, and ſaid, they were Traitors that proceeded againſt his Will; were condemned of High Treaſon in the following Parliament of the 11 *Rich.* 2. which Law was confirmed in the 1 *H.* 4. 3. 4.

And if the King cannot by Proclamation, Writ or Letter, without juſt and lawful Cauſe

aſſign'd

2 Ed. 3. *cap.* 8. 14 Ed. 3. *cap.* 14. 1 R. 2. *c.* 2. 11 R. 2. *c.* 9.

aſſign'd, prorogue, or adjourn the Term or ſitting of any Court of Juſtice, much rather may it be ſuppoſed, the Cuſtom of the Parliament ſitting (to anſwer and diſpatch all Petitions, to redreſs the Kingdoms and Subjects Grievances, and ſecure the Realm from Danger) is not to be diſturbed or iterrupted.

Monit. Brit. Car. 1.

For a King, when he calls his Parliament, ſhould propoſe to contribute what in Reaſon, Juſtice, and Honour, and Conſcience he can, to the happy Succeſs of it; nor ſhould it have any other deſign in him, than the general good of the Kingdome.

3 *Obj.* The King having the Power to Aſſign the Place of their Aſſembly, argues, their Diſpoſition authoritatively in himſelf.

I anſwer, firſt, the Aſſignation of Place muſt be ſuppoſed to be within the Kingdom. 2. That many other things of this indifferent Nature, are neceſſarily left to the King by his Prerogative in infinite variety of Circumſtances, to act by his Diſcretion, ſo we may conſider of this Appointment for the meeting of the Parliament, which was moſt uſual, where with moſt Conveniency he might conſult them, and where as it were, *ſuper viſum periculi* might accommodate Expedients for Succor or Supply, ſo that they were convened at *York*, at *Shrewsbury*, *Canterbury*, &c. and other places, in the time of War or Expedition into or againſt *Scotland*, *Wales*, or *France*, and once for an Affront, the King and Parliament (then ſitting at *Northampton*) roſe, and went in their Body, and laid Siege to *Bedford* Caſtle, and there continued until they reduced the place, and overcame the Rebels.

O!

O! Happy Kings, when you diſcharge the Cares and Incumbrances, and Burthens of your Thrones, by the Aſſiſtance and Advice of your great Counſel, whoſe ready Zeal, and intereſted Care, did ever anticipate or accommodate your needs with Aids, Succor, and Supply, and by ſuch unerring Methods ſerve you, you never failed of the deſired Succeſs of Peace and Glory.

Sed qui color albus erat nunc eſt contrarius Albo. Now we turn the Tables, we ſhall not always find ſo fair Accord, ſuch quiet and peaceable Complyance, nor ready Motion to entertain and gratifie the People in the tender Conſideration, Commiſeration, and Redreſs of their Complaints and Grievances: to which my Purpoſe brings me, being to diſcourſe farther of the Parliament, as the Nations great Counſel.

2. So ſhall conſider, what both and either Houſe (in the ſtrength of the right, acknowledged to be in them, for providing for publick Good and Safety) have done in the matters that have paſſed or been preſented from them unto the King, in reference to the Aſſertaining and Preſervation of their Laws and Liberties; for during the Seſſion of Parliament (the King may expect as moſt proper to the duty of Subjects, that propoſitions for Remedies of Evil, ought rather to come to him, than from him. *Mon. Brit. Cor. 1.*

Though the Government of a King is declared by his Actions yet the Government of a Kingdom is only manifeſted, by ancient Cuſtoms, Laws, and particular Acts of Parliament: In the World's Nonage, the Hiſtorian ſays, *Populus nullis legibus tenebatur arbitria potentiam pro* *Juſtin.*

legibus erant. Take the Polity and *England's* Government away, and it will be only a piece of Earth, wherein ſo many men have their Commorancy and Abode, without Rank or Diſtinction, without Property in any thing farther than Poſſeſſion; no Law to puniſh the murthering or robbing one the other, ſo that we *Bracton.* may take up *Bracton's* Rule, *Nihil tam proprium eſt imperii quam legibus vivere, quia ſine lege non poteſt eſſe Rex.* It is the Law that does intitle the King to the Service and Allegiance of his People, it intitles the People to the Juſtice and Protection of their King; and therefore 'tis not *Plowd. Com.* 236. without Truth agreed as a Principle, *Major hereditas venit uni cuique noſtrum à jure & à legibus quam aparentibus.*

Law is the ſureſt Sanctuary that a man can take, and the ſtrongeſt Fortreſs to protect the Weakeſt of all, *Lex eſt tutiſſima caſſis, ſub clypeo legis nemo decipitur.* It is the Nations Rampart and regular Fortification againſt all forreign *Cook Inſt.* 56. Force, it's Arſenel and Fortreſs, it gives both Weapons of Defence and ſure Retreat againſt the inteſtine Aſſaults of Violence and Commotion; and 'tis every man's Houſe and Caſtle, wherein he may defend himſelf, and oppoſe any man that ſhall invade him ——— But becauſe this is moſt elegantly expreſs'd in the ſence of a modern Poet, I will preſent the Lines.

Your Laws, your All, doth fence ſecure from fears,
Theſe kept, what need the uſe of Bandaliers.
Conſider well, 'tis Law that makes a King,
But th' Sword another to the Crown may bring.

Force knows no diſtinction, longeſt Sword,
Makes Peaſant, Prince, Lacquey above his Lord.
If Will be all that is deſign'd for Laws,
That Will inferiour may be to *Jack-ſtraws.*
If greater Force him follows, there's no Right,
Where Law is wanting, if for Will men fight.
Beſt man alone is he, who is moſt ſtrong,
Where no Law is, there's neither Right nor
Wrong.
That Fence broke down and all in common laid,
Subjects may Prince, as Prince may them invade.
For they Preſervers are of Majeſty,
The Law deſtroy'd, Prince is no more than we.
And very vain would be the name of Crown,
If Statutes, Laws, if Parliaments were down.

So that when we reflect upon the foregone Diſcourſe, and ſatisfie our ſelves, our Anceſtors, whether we reſolve our ſelves into the *Brittiſh* or *Saxon* Original, were Freemen, they were not otherwiſe ſo, then as they enjoyed the Liberty of their Laws, under their Governours or Kings, during the ſucceſſive Continuance of thoſe Powers. And it was an acknowledg'd Maxim in the *Saxon* Rule, That no great man nor any other within the whole Kingdom, may aboliſh the written Laws; for their Kings demanded their Prerogative, *ex pari*, by this following rule ſeeing I according to your Laws, allow you what is yours, do you ſo to me.

King *Ethelſtan.*

For the good eſtate of the Realm, King *Alfred* aſſembled the Counts, Earls, and great men of the Realm, twice by the year or oftner, for the right Government of the people of God, *Habet enim Rex curiam ſuam in Conſilio ſuo, in Par-*

Horn *Mir, Juſt. l.* 3. *S.* 3. *p.* 9. *Fleta lib.* 2. *p.* 66.

liamentis ſuis, præſentibus Prelatis, Committibus, Baronibus, Proceribus, & aliis viris peritis, ubi terminati ſunt dubitationes, judiciorum & novis injuriis immerſis nova conſtituuntur remedia.

Fleta lib. 1. 17. The King hath a Superiour, namely, God, alſo the Law by which he is made King, likewiſe his Court, his Earls, and Barons, becauſe they are call'd Counts, as being the Kings Fellows, and he who hath a Fellow, hath a Maſter, and therefore if the King ſhall be without Bridle, that is, without a Law, they ought to impoſe a Bridle on him; ſee King *Car.* 1. anſwer to the nineteen propoſitions. **Bract.** *lib.* 2. *cap.* 17.

Mur. 1. *cap.* 1. King *Canutus* at his Election, obliged himſelf that he would be their lawful King to govern them according to the written Laws of God and the Nation.

K. Canutus 67. 'Tis true, ſome of their Kings ran into Exceſſes, but all was amended, either by the body of the People in their Wittagenmote, when they made Enquiry into the matter; or by the Princes fair Compliance, when Complaint was made, and ſo the Law was ſaved.

The *Norman William* at his Entrance, made neither pretence to conquer or violate the then received Laws and Cuſtoms, but gave full caution and his royal Compromiſe for their Obſervance.

The like Stipulations were often and ſolemnly repeated by his Succeſſors, and then *Magna Charta*, which was for the moſt part, declaratory of the principal grounds of the fundamental Laws of *England*, and was only a Supplement, not a new Declaration of the Laws, proem to 2. *Inſt.* p. 2. authorized to confine and aſſertain the Regal by a legal Power: but evil Miniſters too often influenc'd the royal Ears with falſe Suggeſtions and Surmiſes, that thoſe Charters and Agreements would keep them down continually, make them poor, and in a ſtate of Pupillage, and either foreign Counſellors admitted, who acting by ſtrange adviſe made all things appear ſtrange and forreign, the King unto the People, or the People to their King; or elſe Favourites advanc'd to ſuch immoderate height, that they oretop'd both Law and Soveraignty, ſo became an Eye-ſore and a Grievance to the Nation; inſtead of Cement between King and people, begetting the occaſions of Offence, and thereby brought Ruine ſometimes to all, but ever to themſelves.

Extraordinary Advancement conferr'd on the Nobility, brings Honour to the Throne, but where they do belye their Titles for want of Worth and Uprightneſs, they make the Scepter ſtoop, by ſtirring up Envy in the Nobility, and Indignation in the people; for Advencements are bred from the Crown, but ordinarily fed from the people.

Now, if a Parliament or a Kingdom miſleade the King, at the worſt, he is but miſguided by his Counſel, but if he be drawn aſide by Favourites, he muſt thank his own Election; in the firſt he has but the leaſt ſhare in the Burthen, in the other, he muſt bear and ſuſtain the whole. *Mace.*

I Deſire here to beſpeak the Reader, that the Author's may anſwer for whatever may appear harſh or ungrateful in ſome following Tranſcripts, the Sceans indeed were very boyſterous and rugged, and the Authors writ their Stories with a ſupercilious Brow, and a ſharper Quill: for ſome time after the Entry of the *Normans*, the times, like a rugged Sea, agitated by croſs Winds of arbitrary Vapours in and about the Throne, and by forreign Engagements from the holy Chair, made the true face of Affairs troubleſome and cloudy both for the Writer and the Reader.

It muſt be here acknowledged, that Princes have no ſhare or part in the ill of thoſe Actions, which their Judges aſſure them are juſt, their Counſellors, that they are prudent, and their Divines, that they are conſcientious.

Eikon Baſil. Often, Parliaments is the fitteſt means to keep Correſpondence between the King and his People; whereas on the contrary,

The Intermiſſions or (which is full as ill) the undue Fruſtration of Parliaments, the unruly uſe, if not the abuſe, of Prerogative, diſſolving them, have often made ill times, and ſo have made ill Miniſters, for no State can be aſſured or confident of any publick Miniſters continuing longer good than whilſt he is accountable to ſomething that may put a check upon him. Though ſuch, in my Opinion, deſerve an *Athenian* Judgment, if they carryed themſelves well when time was, and after ill, they merit double Puniſhment, becauſe they are not good as they were, and becauſe they are evil as they were not. Aſſuredly, the ſtate and Condition of the ſeveral parts for which the Commons ſerve, their Diſpoſitions, Inclinations, Apprehenſions, their Fears and Jealouſies, are beſt known to their Repreſentatives in Parliament: they ſit there as the great Counſel of the Kingdom, and in that Capacity, it is their duty to take into Conſideration, the ſtate and Affairs of the Kingdom, and where there is occaſion to give them in a true Repreſentation by way of Counſel and Adviſe, with what they conceive neceſſary and expedient for them.

Remonſt. Parl. 3. Car 1.

This is not their own, only Opinion of their Power and Duty, it was inculcated into his Parliament by King *James*, That it would be the greateſt Unfaithfulneſs, and breach of Duty to his Majeſty, and of the Truſt committed to them by their Country, that could be, if in ſetting forth the Grievances of the people, and the Condition of all the parts of the Kingdom, from whence they came, if they did not deal clearly with him, without ſparing any, how near and dear ſoever they were unto him, if they were hurtful to the Common-wealth. Under this Conſideration, we may be thankful for their Power, that they have a general Influence to inſpect and repreſent without a Limitation, ſo that to be exceſſively vitious, was not to be ſecure, neither are Facts of Treaſon, above the cognizance of the acts of Reaſon, and the Laws and Statutes of the Kingdom.

Speech of K. Jac. *to Parl.* 1.

Speech of K. Jac. *at* Powder Treaſon.

Speech Jac. 19 *reg.* 1621. *proceed judicially, and ſpare none.*

The King ſhould be well pleas'd with his Parliaments Intentions, to reform what the indulgence of Times and Corruption of Manners may have depraved: nor ſhould he by his power, protect any againſt the Juſtice of the Parliament, nor ſhould any man be ſo dear unto the King, as whom he ſhould have the leaſt Inclination to adviſe either to withdraw himſelf, or deny appearing upon their Summous; for the greateſt

Monit. Brit. Car. 1.

means

Ibid. means to make the Parliament happy, is that the King on his part, and the Members thereof on theirs, lay aſide all Suſpition one of another.

How our Anceſtors and Predeceſſors carryed themſelves in Parliament, for the Maintenance and Preſervation of thoſe Laws and Liberties *Ephem. Parl. 3. & 4. Carol. 192. T. F.* hitherto, in Safety tranſmitted to us—when leſs could not ſerve the turn, but by new ſevere Commiſſions to hear and determine Offences againſt their Liberties, publick eccleſiaſtical Cenſures, or Excommunications againſt the Authors or Actors of ſuch Violations, Accuſations, Condemnations, Executions, Baniſhments, that they proceeded by theſe Methods where their Parliamentary power to adviſe, was either neglected or invaded, and Acts of power were uſed againſt the Law, or Judgments of Law againſt their Liberties, will appear by ſome of the Preſidents next following, and other the Examples of this Tranſcript.

5 Hen. 4. n. 9. 10. The Commons having preſented to the King in Parliament, divers Grievances in the ill managing of his Revenues, the decay of his Houſes, Caſtles, and Parks, the great poverty and preſſure of his Subjects, and dangers of the Enemies thereupon, they moſt intirely and cordially prayed the King to conſider the eminent perils of all parts of the Realm, by reaſon of the Enemies and Rebels, of which they had News from day to day; and that as the Caſe then ſtood, if ſuch Miſchiefs were not ſpeedily and gratiouſly remedied and reformed in this Parliament, it might fall out upon ſudden Arrival of Enemies, or by ſome other means, this Parliament

ment muſt of Neceſſity be deported from by all, and diſſolved, ſo as the Lords and Commons ſhould never reaſſemble again, to redreſs the ſaid Miſchiefs and others, which God defend; And therefore, that it would pleaſe the King, conſidering the high Wiſdom and Diſcretion of the Lords, and that they had knowledge of many perils and matters, which could not be ſo clearly known unto the King, that he would now in this preſent Parliament, charge all his Lords Spiritual and Temporal, upon their Faith they principally owe to God, and the Faith, Homage, and Allegiance, which they owe to our Lord the King himſelf, for the Aid and Salvation of themſelves, and all the Realm, that the ſaid Lords would counſel and ſhew him their Adviſe, and wholſome Counſel in this behalf, ſeverally and entirely without Diſſimulation or Adulation, having regard to the great Miſchiefs and Neceſſities aforeſaid, and thereupon, our Lord the King, moſt gratiouſly with his own Mouth, in full Parliament, charged and commanded as well the Lords as the ſaid Commons, that they ſhould do their diligence and ſhew unto him their good and wholſome Counſel in this behalf, for the Aid of him and all this Realm. And after, the ſaid Commons in the ſame Parliament, made Requeſt unto the ſaid Lords, that ſeeing the King had given them ſuch a Charge and Command, and that in ſo high a manner of Records, that they would do their diligence well and loyally, to purſue the ſame, without any Curteſie made between them in any manner, as they would anſwer before the moſt high, and before our Lord the King, and to all the Realm, in time to come, and that the Commons themſelves would thereupon do the like on their parts; which Method, if King, Lords, and Commons would now purſue, and cordially, and ſincerely, promiſe and agree to do, without partial end or byaſs'd Intereſts, we might aſſure our ſelves a ſettled and happy Eſtabliſhment in Church and State.

Mat. Par. Hiſt. 232.

King *John* having invaded the peoples Liberties, and oftentimes denied them the Confirmation of their Charters; in a Parliament, 1215. they produced the Charter of *Hen.* 1. containing certain Laws and Liberties enjoyed from the time of *Edward* the Confeſſor; in the defence whereof, they bound themſelves by Oath, to ſpend their Blood: the King having diſappointed them in three Parliaments, they withdrew themſelves from his Allegiance, and aſſembled themſelves at the Parliament at *Stamford*, in a poſture of Force; affirming, *Quod niſi rex incontinenti concederet, & ſigilli munimine confirmaret, Leges & Libertates ante recitatas ipſi per captionem ſuarum terrarum, & poſſeſſionum ipſum Regem compellerent donec ſuper præmiſſis ſatisfaceret competenter.*

Cook 4. *Inſt.*

The King in great Diſpleaſure, *Affirmavit juramento quod nunquam tales illas concederet libertates, unde ipſe efficeretur ſervus.*

Upon which, they betook themſelves to Arms, but the King being utterly deſerted, and purpoſing to attend a farther Opportunity for Repairs, to comply with the Neceſſities that were upon him, ſent Meſſengers to aſſure them, *Quod pro bono pacis & ad exaltationem ſui & honorem gratanter concederet Leges & Libertates quas petebant.*

Afterwards in running Mead, he did confirm the ſame, diſpatching Orders and Inſtructions through the Kingdom, to command their due obſervance, inforced with this Clauſe, That to the beſt of their Power, they might or ſhould conſtrain the King, by ſeizing his Caſtles, *&c.* To perform the ſame, twenty four of the Nobility, were elected and deputed for the better Guarranty of the Obſervance; four whereof, were appointed for a Quorum, to appear before the King, to demand Repairs of any damage or Injury ſuſtain'd for want of their due Obſervance.

Par. rot. Pa. 1. *do.* 3. 16. Joh.

In the next year of his Reign, he added this Clauſe of Amneſtia or Oblivion, unto the Charter of Confirmation, *Sciatis* &c. *Conceſſimus Baronibus,*&c. *qui contra nos ſunt, quod nec eos, nec homines ſuos capiamus nec impriſonemus, nec diſſeiſiamus de libero tenemento, vel liberis conſuetudinibus ſuis, nec ſuper eas per vim vel arma ibimus niſi per legem Regni noſtri vel judicio parium ſuorum vel per legem terræ.*

This King who made the former Promiſes with an intent to break them, continued to incenſe his People, by diſcountenancing and diſcontinuing Parliaments, by Breaches made upon thoſe ſolemn Obligations he had made them, for the enſurance of their Rights and Liberties, and deſpairing of a Remedy; they at laſt waved their Allegiance, and betook themſelves to the Protection and Obedience of the King of *France*, and did by divers hoſtile Acts, invade the royal propriety and demeans, and reduc'd the King to the greateſt of Diſtreſs and Exigence, until he dyed under the preſſure of his unhappy Fate, *Lewis* in the mean time poſſeſs'd of the royal Chamber the Metropolis of this Empire. King *John* no ſooner dead, but with the new hopes of a rightful Government, they return'd to pay their Loyalty and Allegiance unto his ſurviving Son, an Infant, whom they elected for their King, outed the Forreigners out of the Land, and made a ſhort and abrupt Concluſion to that *French* Farce. This their Tranſaction, minds me of a Story in *Tit. Livye.*

The *Decemviri* had for a longer time than cuſtomary, diſcontinued the meeting, and uſurp'd upon the Power of the *Roman* Senate, the Neceſſity of a ſudden War, enforced the *Decemviri* to ſummons them to aſſemble, who broke up in diſcontent *re infecta.* The *Decemviri* undertake the War, the Succeſs was ill and fatal, *ne quid ductu aut auſpitio decemvirorum proſpere gereretur vinci ſe patiebantur.* They rather chooſe to ſuffer a preſent Diminution of Honour, than by Victory to continue, and gratifie the new Tyranny of their Maſters, and being remitted to their ancient Liberty, *Hoſtibus belloque gratiam habuerunt.*

Obſ. We may take this for an undeniable Truth, that when Differences and Difficulties ariſe or are begotten and fomented between the King and People, they always occaſion ſad Effects; 1. An Inclination to omit the frequent Intercourſe and Uſe of Parliaments. 2. A propenſity in the Members, to decline, to appear, or give Attendance: the firſt of theſe is for want of good Will in the King, (accurſt may they be that labour in thoſe ill Offices) and was ever fatal and deſtructive to good Government; the ſecond is for want of Zeal and Courage in the People.

If in diſtempered Parliaments it is good to withdraw, yet in diſtempered times, 'tis moſt neceſſary to meet, and gain a right underſtanding of all Parts: for if the proſpect be of violent and diſturb'd Agitations to enſue, 'tis ſafe, if not neceſſary, that every Eye ſhould be open, and Councils ready for every occaſion. And though the Parliament encounter many a ſhock the Body feels not, let it be conſider'd, tis better to endure with hope, than abandon all to 11 H.6.11. infallible ruine and diſtruction. And becauſe their honeſt work is full of Reflection, and they have been oft-times ſubject to ſad Influences for their labour, their Perſons are put under the Protection of the Law, and priviledged in an 5 R.2.cap. eſpecial and a deſerved manner. 4. Parl. 2.

They ſhewed not greater skill and policy in the framing, obtaining, or aſſerting the Tenor and Eſtabliſhment of their Laws and Liberties, than they did of Magnanimity, Care and Vigilance, to ſee them inviolably executed and maintained. In this King's time, ſundry Inſtruments paſs'd, that Inquiries might be made into their due obſervance. And though by the Precedents alledged, we may find him zealous and moſt profoundly Solemn in the making of ſtrict Oaths and Promiſes, yet we ſhall find him neglect both Faith and Honour in the matter of Performance.

Henry the Third, in 7 *Regni* (and in nigh 2 H.3.m.6.
20 other Parliaments) *Requiſitus ab Archiepiſ-* 3 H.3.
copo, &c. ut libertates & literas conſuetudines pro Parl. 2.
quibus querra mota fuit contra patrem ſuum confir-

maret, & idem Rex *diffugere non potuit (quin hoc fatetur ac) facere cum in receſſu* Lodovici *ab* Anglia *juraverat, & tota Nobilitas* Angliæ *cum illo, Quod Libertates præſcriptas omnes obſervarent & ab omnibus traderent obſervandas, Quod audiens unus ex Conſiliariis Regis, dixit Libertates quas petiis quia violenter extortæ fuerant non debent de jure obſervari: ſed ei reſpondebatur, ſi regem diligeres pacem regni non impedires, & poſtea Rex dixit, omnes Libertates illas juravimus, & omnes aſtricti ſumus ut quod juravimus obſervemus.* The King nevertheleſs did not perform the ſame, (and no wonder, for here were evil Counſellors in the caſe) But ſending an Embaſſy to the *French* King, to ſurrender to him *Normandy*, in purſuance of an accord made in *England*, and urging againſt him breach of Faith, for that he had fail'd to perform the ſame ; received in anſwer, (by way of Recrimination, *Ille prius pactum violavit, non ego)* becauſe he had not confirm'd the Charter of his Peoples Liberties, which gave commencement to the War, and which by Oath he had ſtipulated to confirm ; and adds, *Quod peſſime leges ad ſtatum priſtinum ſunt reductæ, & illis nequiores generaliter per* Angliam *ſunt conſtitutæ.*

Matth. Weſtm. 133.

The ſame King, in the 15th of his Reign, brought in debt by his Foreign Wars, *neceſſitate compulſus, ab omnibus generaliter auxilium poſtulavit, Reſpondebatur, Quod omnes qui de eo tenebant in Capite, cum ipſo ibi erant corporaliter præſentes et pecuniam ſuam ita inaniter effuderant, ut quod inde omnes pauperes receſſerant, unde Regi auxilium non debebant, & ſic petita Licentia Laici omnes receſſerant.*

Again, In the 21th of his Reign, demanding a ſupply or aid to ſerve his wants, to be put into the hands of ſuch perſons, as they ſhould appoint to be disburſt only, upon the neceſſary and urgent Affairs of the Kingdom, the Parliament expecting no ſuch Overture, *Indignantes reſponderunt ſe undique & ſæpe gravari promittendo & perſolvendo, aſſerentes indignum nimis fore & injurioſum permittere regem,* &c. *ut à naturalibus hominibus ſuis, quaſi à ſervis ultime conditionis in detrimentum eorum & alienorum juvamentum, tantam pecuniam tot toties extorqueret argumentis, & inconſulte hoſtibus Regni diſtribuit, quod ſepius gravati videbant alieniginas ſuis bonis ſaginatas ſtatumq; regni præ paupertate vacillare, & multiplex periculum imminere, nec tamen* Theſaurus *Regius qui deberet eſſe regni robur & confidentia ſenſerat incrementum.*

Cupiens Rex *hoc murmur ſedare, promiſit jurejurando, ſe nunquam amplius injurando moleſtare, vel laceſſando, dummodo ſibi præſens* 30. *pars mobillium Angliæ benignæ conceſſa ſolveretnr, & amplius cupiens ſe eorum ſibi gratiam conſiliare ſe extunc & deinceps (quicquid factam fuerat ante) dedit ſe conſiliis fidelium, & naturalium hominum ſuorum, præterea de hoc quod dicebatur, quod conabatur ea quæ conceſſerat, & chartis confirmaverat, per authenticum ſummi pontificis infirmare, dicebat* Rex *hoc falſum eſſet & ſi quid tale, quod forte fuerat ſuggeſtum in irritum affirmavit, ſequi penitus talia revocare, præterea ſereno vultu, & ſpontanea voluntate promiſit libertates magnæ chartæ ſuis fidelibus regni ſui extunc inviolabiliter obſervare, unde factum eſt ut omnium corda hæc audientium ſibi mirabiliter in verbo illo conſiliavit:* whereupon, *Poſt multas deceptationes quia ſe rex. humilians promiſit indubitanter ſe eorum extunc, & deinceps ſtandum conciliis.* They with all Zeal, Readineſs, and Obedience, anſwered the Kings Occaſions.

Mat. Paris 24. H. 3. 1240. In three years after, we find them again, *Reponentes queremoniam ſuper variis injuriis & oppreſſionibus illatis eccleſiæ, per iniquum, Regis Conſilium, contra ſuas chartas & juramenta, ſe vehementer admirari cum ipſe Rex toties juraverat, jura eccleſiæ illibata conſervare, ipſe Candelam tenente dum epiſcopi contra violatores ſententiam fulminabant, in cujus ſententiæ conſummatione, Rex ut alii ſuam candelam extinxit inclinando*: The like Sentence being denounced, *in omnes Regis conſiliarios qui Regis animum ad predicta enormia conabantur inclinare.*

Mat. Paris 561. 26. Hen. 3. It was not longer than two years, when he made a farther Demand of money, for a foreign Expedition, which he had, without Aſſent of Parliament, engaged in. *Reſpondebant magnates cum magna animi amaritudine quod talia inceperat inconſultius & talia effrons impudenter poſtularet, exagitans & depauperans fideles ſuos, tam frequenter trahens exactiones in conſequentiam, quaſi à ſervis ultime conditionis & tantam pecuniam toties extorſit inutiliter diſpargendum, contradixerunt igitur Regi in faciem nolentes amplius ſic pecunia ſua ſpoliari.*

Obſ. War inconſiderately and raſhly undertaken, ſeems to be the Fever and Diſtemper of a State, but when in Truth it is the *ultimum remedium*, and laſt reſerve for Law, againſt Oppreſſion, and for liberty againſt Invaſions, it becomes neceſſary and unavoidable, we muſt be careful not to intereſt our ſelves in the firſt, that we may not be unprovided to ſupport the laſt occaſions; to that end we have a reſtraint of Law, and very good rules to guide us, for we muſt not forget, that a politick Kingdom is an Aſſociation of men (in all Caſes) by conſent of Law, making one chief, who is made for the defence of the Law, and of his Subject's Bodies and Eſtates, and he cannot govern by any other Power, and of this Nature is this Kingdom; And though it be agreed, that War is neceſſary, yet our Laws compel not any to foreign Service, (if not obliged by ſpecial Tenure) unleſs the Parliament had given their Conſent and Approbation of the ſame, neither were Taxes and Supplies allowed or conſented to, unleſs the Burthen of the War appeared to be extraordinary, and then they have been liberal to Exceſs, witneſs the royal Aid given to Queen *Elizabeth*, the moyety whereof, ſhe only accepted of, and gave her Thanks for the Remainder, which ſhe remitted.

Forteſc. 12. 13. *fo.* 30. 31.

1 Ed. 3. St. 2. *c.* 5.

14 *Ed.* 3. *St.* 2. *c.* 11. Bodin *reip. lib.* 6.

However, the King not to be diverted by any Denial, perſiſted immoveably to purſue his Reſolutions, and laboured by all the Arts of Policy and Perſwaſion, to incline them to this Aid, adding an Expoſtulation, *Qua fronte poteritis me dominum veſtrum ad tam arduum negotium reipublice procinctum relinquere pauperem & deſolatum cum tenear promiſſa de tranſitu meo adimplere jurejurando ſtrictius allegatus, quod cum ad univerſitatis notitiam perveniſſet, reſponderunt ſupra id quod dici poteſt admiramur in quam abyſſum ſubmerſe ſunt innumerabiles pecuniæ quas à diverſis magnatum cuſtodiis & variis extortionibus* &c. *do-*

mine Rex immunxiſti quenunquam Regno vel modicum contulerunt incrementum, præterea legatos quoſdam vel legatorum fungentes officiis in hoc regnum advocaſti qui quaſi racemos poſt vindemias, ſibi reliquias reſidue pecuniæ colligerunt, cæterum nimis admirantur magnates Angliæ univerſi quod ſine eorum conſilio & aſſenſu, tam arduum, tam periculoſum es aggreſſus, fidem adhibens, fidem carentibus, ſpretoque naturalium tuorum favore, exponis te tam ancipitis fortune caſibus. Treugarum fœdus inter Regem Francorum, *& tu in anima tua captatum ac Juratum indiſſolabiliter & inviolabiliter uſque ad terminum obſervandarum inhoneſte & impudenter, non ſine periculo animæ tuæ & fameleſione diſrumpis & ſic ſolutum eſt concilium:* Withal, they cauſed the reaſons of their Denial of Supply, to be recorded.

1. For that the King ought to keep the League made with the King of *France*, ſacred and inviolable, and then if the King of *France* ſhould fail on the performance of his part, *Libenter ad hoc Conſilium apponerent pro poſſe ſuo de auxiliis ei dando.*

2. That they had granted after many other, a late Tax, with this Condition, *Quod iſta vexatio vel aliæ Precedentes amplius non traherentur in Conſequentiam, & inde fecit eis chartam ſuam.*

3. The ſaid late Tax was appropriated, and withal committed to the Diſpoſition of, &c. from whom they have not as yet been adviſed, that the money was as yet expended, ſo believe it to be yet ready for the Kings preſent Wants and Supplies.

4. That the King by ſeveral other ways both caſual and certain, had or might have received,

and been poſſeſs'd of conſiderable Sums of money, by which they at leaſt are impoveriſhed.

5. Becauſe the King after the laſt late Tax, given, *nunquam chartam ſuam de libertatibus tenuit imo plus ſolito poſtea gravavit reſponderunt eidem domino Regi preciſe quod nullum ei ad præſens facerent auxilium.*

11 R. 2. *n.* 8. 13.

We may here inſert, that the Parliament did uſe a Power to inſpect and regulate the Profits and Revenues of the Crown, and did as an important act of Duty, inquire into the Manage and Diſtribution of the Royal Treaſure, for the King's Revenue is of a mixt Nature, and much of it is intended for publick Service, as himſelf is a publick perſon.

The common end of all, is to ſupport the royal State in time of Peace, and for the Maintenance of Strength and Force in time of War, ſo that it not improperly concerns the Parliament, to take account, that it be not irregularly and profuſely waſted, if it be extravagantly ſqandred, it muſt by extraordinary Courſes be ſupplyed, which is ever out of the Peoples Purſes.

15 Ed. 3. *cap.* 3.

Speed 485. 3. in Hen. 2.

And it has been by Law judg'd neceſſary and expedient, to expoſtulate with the Officers of the ways and occaſions of it's Disburſements; for it concerns them, to provide in all the Exigencies and Emergencies of the Crown: and when neither Aids nor Loans, Taxes nor Aſſeſſments, could ſatisfie the Expences, and the Crown Demeans have been invaded by pawning, ſelling, or otherwiſe imbeſelling, treaſuring up Poverty for the future both of

1 R. 2. n. 48. King and Crown; they have been forced to ſtop the Leak, and have reindowed the Crown by Statutes of Reſumption.

Undoubtedly, 'tis ſeldome but that Kings conſider the condition of their People, that their Patience will be ſpent ſoon after their Supplies, if they ſee all waſted without proſpect of Advantage, ſo that they will keep a Rule upon their private Expences, and ſet a good gloſs upon the publick, and lay a Plat-form for augmenting the Treaſure of the Kingdom, as well for the benefit of the People, as the Crown. And if the People part with Money, and thereby the Kingdom encreaſes in Honour and Renown, it's becoming a Terror to it's Neighbours, makes a fuller Security to their Enjoyment, and ſo they are no looſers at drawing up the Ballance; for when their Money is applyed to it's proper end, expended on evident grounds of State, levyed with a tender hand in a way of Parliament, it cannot on thoſe terms be taken, becauſe it is ever ready to be freely and neceſſarily beſtowed and given.

Mat. Paris 560. *Henry* the third yet ſuffering himſelf to be abuſed by wicked Counſel, provoked the People ſo much by ſuch continued and repeated Violences upon them, that they aſſociate themſelves in Counſels and in Arms, the City of *London* appearing with greateſt Zeal to encourage the deſign. Before the War commenc'd, the King obtain'd, *Licet cum multa difficultate*, time for Truce, with Promiſe to give them Satisfaction at the next Aſſembly of the Parliament, which being indicted to be held at *Oxford*, *Præclari viri ad Parliamentum* Oxoniæ *ve-* Mat. Paris 940. and in diverſe other places.

nientes ſibi præcaventes & providentes confederati ſunt, quia pedicos & laqueos alienorum formidabant vehementer, & regis Retiacula nimis ſuſpecta habuerant, veniebant cum equitibus & armatis, & comitatu copioſa Communiti Parliamento, *autem incipiente ſollidabatur magnatum Conſilium immutabile exigendo conſtantiſſime, ut dominus Rex chartam libertatis,* &c. *firmiter teneat & conſervat, quamque idem Rex multoties conceſſerat & tenere juraverat ejuſq; infractores horribiliter excommunicaverat & ipſe fuerat unus excommunicantium exigebant inſuper ſibi juſticiarium fieri qui juſtitiam faceret equinanimiter divitibus & pauperibus. Quædam etiam alia regnum contingentia, petebant ad Communem regiſet regni utilitatem pacem ſimul & honeſtatem quorum conſiliis & proviſionibus neceſſariis Dominum regem frequenter & conſtantiſſime conſulendo rogitabant obtemperare, jurantes fide mediante, & mutuo dextras exhibentes quod non omitterent propoſitum perſequi pro pecunia vel terrarum amiſſione, vel etiam pro vita & morte ſua, & ſuorum. quod Rex recognoſcens juravit Conſiliis eorum obſecundare &* Edvardus *filius ejus eodem eſt juramento aſtrictus.*

After which they expell'd all the Aliens away from being near the King, and in the 43 of *Hen.* 3. there iſſued out Commiſſions or Precepts to the ſame Effect; moreover, that every man injured might freely ſue or complain againſt or arreſt the King, or any other perſon. *Rot. Parl.* 43 Hen. 3. *m.* 10. *n.* 41. 50.

Either houſe of Parliament may take a voluntary Oath, to ſee their Laws obſerved. *Note.*

In the forty ſeventh of this King, there aroſe a difference between the King and People, about the Performance of the Acts of the laſt Parlia- *Co.* 2. *Inſt.* 536.

ment at *Oxford*, which was ſubmitted to the Compromiſe of the *French* King, who vacated all the Acts and Tranſactions of that Aſſembly, *excepto hoc quod antique charte Regis* Johannis Angliæ *univerſitati conceſſe per illam ſententiam in nullo intendebat penitus derogare*, By the which Reſervation, they conſtrain'd the King to ratifie all the Acts of that former Parliament.

Walſ. *hiſt.* Ang. 37. 38. King *Edward* the Firſt, in the twenty fifth of his Reign, aſſeſſed an unreaſonable Tax on Wool, without Conſent of Parliament, and alſo iſſued forth a large and general Summons, to command the people to accompany him in his 'Wars in *Flanders*. Two Earls, Ex parte co-'mitum ſui regni, & tota Communitas remonſtrate, againſt the Impoſition, foreign Service, and other Grievances, againſt the great Charter and their Liberties. 'Quia non tractarentur ſe-'cundum leges & conſuetudines terræ, & ſe-'cundum articulos contentos in Magna Charta, 'ſecundum quos tractari anteceſſores ſui ſole-'bant habere ſed voluntare excludantur, quia 'vero communitas optat ſalutem domino noſtro 'regi, non videtur eis quod ſit ad bonum Regis 'quod tranſeat in *Flandriam* niſi plus eſſet aſſe-'curatus de *Flandrenſibus*, pro ſe & pro gente 'ſua, & ſimul cum hoc, propter terram *Scotiæ* 'quæ rebellare incepit, ipſe exiſtente in terra, '& eſtimant quanto pejus facerent, cum certifi-'cati fuerim quod rex mare tranſierit, nec ſolum 'pro terra *Scotiæ*, ſed etiam pro terris aliis, que 'non ſunt debito more ſtabilitis. Withal, inhibiting the Kings Miniſters, for levying the aforeſaid Tax, 'Dicentes à Conſcientia ſua non 'emanaſſe, ſine quorum aſſenſu tallagium non 'debet imponi vel exigi. After which, upon their meeting again by new Summons, it was accorded, the Charters ſhould be confirmed. 'Et quod nullum auxilium ſeu vexationem exigat à clero vel populo, abſque conſilio & aſſenſu, & quod omnem offenſam dimittat. And in the laſt Clauſe, 'Quod omnes clerici & laici de Regno noſtro habeant omnes leges libertates & omnes Conſuetudines, ita libere & integre ſicut aliquo tempore conſueverunt melius pleniuſque habere. The King ſollicited the Parliament, that though they gave him no Aſſiſtance, nor would accompany him in his Deſign for *Flanders*, yet at the leaſt, that they would reſpit their Complaints until his Return, for his intended Expedition.

28 Ed. 1. *d.* 7.

Co. 2. *Inſt.* 527 *to* 538.

The Charter of the Forreſt wanted it's Confirmation, and the Nation complaining of their Grievances, by undue and irregular Perambulations, the King iſſued out his Writ, that though the Commiſſions were executed and returned, they ſhould not be obliging until allowed by Judgment in Parliament, upon fair hearing, by Allegation and Defence, and that in thoſe Countries where any Forreſts were, the Sheriffs were by Writ to ſummon all perſons concern'd, to appear and make their Exceptions againſt the Perambulations in Parliament (a Courſe moſt neceſſary after the making a good Law, to prevent the Abuſes in it's Execution; and it may be, it would not be without good Benefit and Convenience to the People, if the ſame Method was made more practical, eſpecially in the Impoſts of *Ex.* and *Hea.*) But this Confirmation was abridged with an unuſual Clauſe and Addition, *viz. Salvo jure Coronæ noſtræ*, at which, the Parliament took ſo great Diſguſt, and were ſo highly diſſatisfied, they diſſolved themſelves in Diſcontent; and at their next Summons, appear'd at *Stamford*, ‘ Equis & armis communiti, ut hactenus delatam extorquerent ad plenam ubi Rex eorum voluntati in omnibus condeſcendit, as appears by the Stat. yet in Being, of *Articuli ſuper chartas & de tallagio non concedendo.*

In a full Convention of the men of *Kent* only, after *William* the firſt had by Force or Compoſition, not only reduced *London*, but the moſt conſiderable part of the Kingdom, to his Obedience, the Arch-biſhop of *Canterbury* thus beſpoke them, That they were born free-men, that the name of Bondage, was never heard of, amongſt them, that nothing but Servitude attended them, if they ſubmitted to the Inſolence of an invading Enemy, as others had done, exhorted them, rather manfully to fight for the Laws and Liberties of their Country, and rather chuſe to end an unhappy life by fighting valiantly for them in the Field, than to undergo an unaccuſtomed Yoak of Bondage, or be reduced from their known Liberties, to an unknown and unſure Slavery. This reſolute Biſhop became their General, and their honorable purpoſe was attended with a brave Succeſs, they obtain'd the happy Compoſition to enjoy their ancient Liberties for ever, without any Diminution, and uſe the ancient Laws and Cuſtoms of their Country, a preſident full in point, to prove the Peoples Laws and Liberties, were ancient and of Right, that they rather choſe to hazard Life than part with Liberty, the true Character and Badge of a free *Engliſhman.*

‘ Proceres & nobiliores regni videntes ſe contemni & Petrum de *Gaveſtum* cunctis anteferri, ‘ acceſſerunt ad Regem humiliter rogantes, ut ‘ Baronum ſuorum vellet tractari regni negotia ‘ conſiliis, quibus à periculis imminentibus non ‘ ſolum cautior ſed tutior eſſe poſſit, quorum ‘ votis Rex facie tenus annuit, & in exilium re‘legavit. But the Parliament ended, the King recall'd him by Writ immediately, and therein recites his Exile to be againſt the Laws and Uſages of the Realm, which he was bound by Oath at his Coronation, to obſerve and maintain, for which cauſe, he did out of that common Right and Juſtice, which was due to all his Subjects, recal and reſtore him without his Peers, and againſt their Wills. *Barones igitur conſiderantes, Domino regi denunciarent, aſſenſu communi ut vel dictum Petrum à ſua compelleret Committativa, articuloſque proviſos effectui manciparet, vel ipſi in eum tanquam in perjurum inſurgerent, addita conditione, quod ſi de cætero poſſit inveniri in* Anglia, *vel in aliqua terra regi ſubjecta caparetur & velut hoſtis publicus declaretur.* Judgment was given againſt him three times, 1. as a Commoner, 2. as an Earl, 3. as an Enemy and publick Traytor to the Realm, and Sentence of Death, pronounced upon his Return from Exile, which in due time was executed accordingly.

Ypodig. Neuſt. pag. 99. 100. *Cla.* 5. Ed. 2. *m,* 155.

Exilium Hug. de Spenſer. Mag. Char. part 2. *fo.* 50.

The Oath of the Lord Chancellor, Treaſurer, Privy Seal, Juſtices of the one Bench and other, the Chancellor and Barons of the Exchequer, as Juſtices aſſigned, and all they that do meddle

14 Ed. 3. *cap.* 5.

dle in the ſaid places under them, is that they
15 *Ed.* 3. ſhall well and lawfully ſerve the King and his
c. 3. People, in their Offices, which Law was farther
18 Ed. 3. improved by diverſe Statutes, enjoyning them
St. 3. by Oath, to do even Law and Execution of
20 Ed. 3. 1, 2, 3. Right to all Subjects, rich, and poor, *&c.* And
1. R. 2. if any of them do or come againſt any point of
cap 2. the great Charter, or other Statutes of the Land,
45 *Ed.* 3. he ſhall anſwer to the Parliament, as well at the
Kings Suit, as at the Suit of the Party, by which
the Parliament out of due care of the publick
Good, have in all times queſtioned, arreign'd,
diſplaced, puniſhed, *&c.* The King's greateſt
39 *H.* 6. *c.* 1. Counſellors, Offices, Judges, for Miſdemeanor,
as in infinite variety of ancient Preſidents, and
in ſome of latter Inſtance, *viz.* of Cardinal *Woolſey*, in *Henry* 8. Duke of *Sommerſet*, and Lord
Admiral, his Brother in *Edward* 6. Sir *Francis
Bacon*, Lord Keeper, and *Cranfield* Lord Treaſurer, in King *James*; and have yet farther as
of Right, claime and Intereſt in the Nomination, or at leaſt of Approbation of Perſons to
Daniel thoſe Offices, *Anno* 1248. *temp. H.* 3. They ex-
164. hibited their Complaint, that the chief Juſticier,
Chancellor, and Treaſurer, were not made by
the Common Counſel of the Kingdom, according as they were in the time of his magnificent
Predeceſſors, and as it was fit and expedient,
Daniel and after in 1249 and 1254. They require and
171, 172. claim again their former Rights, for their Election, which in a Parliament at *Oxford* and
others ſucceeding, were accorded to them, as
may be ſeen in all the Writers of the Stories of
thoſe times. But to conclude this matter, their
Demands were aſſented to and confirmed by

Parliament to them, fully and at large, in the 15 of *Ed.* 3. which never had other Repeal, but by ſingle Proclamation, ſo muſt at this day be acknowledged to be in Force. The Commons came before the King, (*Henry* 4.) and Lords, and by their Speaker (on the laſt day of the Parliament) prayed the King to have Cogniſance of the Lords of his Councel, and that thoſe Lords who were before named, and only ſworn on certain Conditions, ſhould now be newly charg'd and take their Oath, without Exceptions. To which, the King aſſented, the Councel was named in full Parliament, and their perſons particularly known to the end the Commons might if they ſaw Cauſe except againſt them, before they were by Oath admitted into the Privy Counſel.

15 *Ed.* 3. 3. 4.
3 *R.* 2. *Rot. Parl. n.* 11.
1 *H.* 4. *n.* 106.
1 *H.* 4. *Rot. Parl. n.* 14.
1 Hen. 6.

The Parliament appointed eight Aldermen and other Citizens of *London*, Treaſurers to receive and iſſue out theſe Moneys that were levyed by that Parliament to ſupport an intended War with *Spain*; and moreover, conſtituted and commiſſioned 10 Lords and Knights, particularly nominated in that act to be of the Kings Counſel for the War, five whereof at leaſt were to make a Quorum.

21 *Jac.* 33.

I ſhall only add ſome few Inſtances, where in the Houſes joyntly or ſeverally have interpoſed with their Adviſe and Reſolutions, againſt the papal Uſurpations.

Pope *Innocent* by Bull (after King *John* had ſurrendred his Crown and Kingdom to him) in a General Counſel, repeal'd the *Magna Charta* (although it had been ſworn to by King *John* and confirmed by the Pope before) alledging,

Mat. Paris 254.

it was obtain'd by Force, commanding the King, not to obſerve the ſame, inhibiting the Lords and People, not to exact it's Obſervation, which he utterly cancell'd and made void, 'Et ut nullo unquam tempore aliquam habeant firmitatem, cum Magnates has literas tam Commonitorias quam Comminatorias accepiſſent, noluerunt deſiſtere ab inceptis, ſed ad hæc inſurgentes regem acriter infeſtabant, dicendo de Papa, ve qui juſtificatis impium, *&c.* 'And moreover, Excommunicationis & interdicti papæ ſententias, Civitas *Londinenſis* adeo diſpexit per Contumaciam, quod nec eas Barones obſervare, nec prelati publicare decreverunt, dicebant quod non pertinet ad papam, ordinatio rerum laicaram, farther, reviling his Holinſs for intermeddling, and charging the Cauſe of his prepoſterous Zeal, *ut in Barathrum Romane avaritie omnia demergantur.*

23 *H.* 3. And when King *Hen.* 3. and his Clergy, had conſented to an intolerable impoſition, at the Inſinuation and Importunity of the papal Brokers, *Comites* &c. *& laici omnes contradixerunt*, from this fundamental Axiom, *Nolunt leges* Angliæ *mutari, quæ hucuſque uſitate ſunt & approbate.*

Lib. St. Albans, *fo.* 20. *an.* 44. *H.* 3. *Adomar* Biſhop of *Wincheſter* being baniſh'd by the three Eſtates, the Pope expoſtulating the Sentence, *quatenus* a Biſhop or Churchman, had this Reſolution from the Commons, *Si Dominus Rex & regni majores hoc vellent, Communitas tamen ipſius ingreſſum in Angliam, jam nullatenus ſuſtinerent, Petrus de Montford*, their Speaker, ſubſcribed it, *vice totius communitatis*, as Sir *Ino Tiptoft* ſubſcrib'd the Intail of the Crown, 8 *H.* 4. *Vice totius communitatis.*

The Commons would not accept the 2 *H.* 4. 15. nor the 8th of *H.* 6. for Laws, though made by King and Lords, becauſe their aſſent was wanting at their making. 1. It may appear, the Commons did claim a Power in themſelves to oppoſe the King and Lords, to make a diſpenſation of an Act of Parliament, without their Concurrence; And 2. It proves that Power more ancient than 49 *H.* 3.

Ingulp. Hiſt. Col. 626.

Henry the Second, by a large invitation from the Pope (on purpoſe, ſayes the Book, to make an advantage upon his Kingdom in his abſence) was courted to undertake the Holy War, and choſen King of *Jeruſalem*, who likewiſe ſent him the Keys of *David*'s Tower, of the Sepulchre, and withal, a conſecrated Banner. The matter he communicated to his Parliament, whom he adjured. *Quatenus proponerent in medio, quod ſuper his ſaluti animæ ſuæ viderint expedire, ad hoc unum cor ſuum inclinatum dicebat, ut quod exciperet ex eorum omnibus Conſilio modis obſervaret.* It was reſolved upon the Queſtion he ſhould keep within his own Dominions, according to his Oath and Duty, for the Government of his People, *Eſſe enim Regis animæ multo ſalubrius quod regnum ſuum debita cum moderatione gubernat. Et de filiis Regis quidem quorum petiit aliquem patriarcha, ſi ſic rem tamen ſtatuerit quicquid ſtatuerit, cum eſſent abſentes incongruum videbatur.*

Obſ. 'Tis unreaſonable, both for the thing it ſelf alſo, becauſe of the King's own Perſonal Ingagement, to enter into the manage of a Foreign offenſive War, without the general conſent and contentment of the People, for the

Perſon of the King is not to be expoſed in every occaſion that may provoke a War, without due adviſe and deliberation had with his great and publick Council, for that the welfare of the Kingdom is hazarded in his Perſon, and their Liberty highly concerned in his Safety: So that *Ed.* the Third was prevented of a Voyage into *France*, though their Deſign was only to reſtore a Peer by the advice and direction of his Parliament.

1 *Ed.* 3. St. 1.

I cannot omit to inſert this memorable cloſe of an Epiſtle ſent by the Parliament unto the Pope. "Nos tamen qui in regni negotiis portamus pondus dierum eſtum & quibus una cum ipſo Domino Rege intendere conſervationi regni diligenter incumbit oppreſſiones Deo & hominibus deteſtabiles, & gravamina nobis intolerabilias non poſſumus equanimiter tolerare, nec per Dei gratiam amplius tolerabimus. Quia contra antiquas Conſuetudines, Libertates, & Regni Jura, & niſi de gravaminibus Domino Regi & Regno illatis, Rex & Regnum citius liberentur opportebit nos ponere murum pro domo Domini, & Libertate Regni, & niſi citius per vos corrigentur pro certo teneat Sanctitas veſtra. Quod non immerito teneri poteſt, quod tam Eccleſiæ Romanæ quam Domino Regi, tale periculum

imminebit ~~minuebit~~ quod eidem rem aliam non poſſit (quod abſit) adhiberi.

To avoid being further tedious, I ſhall conclude with the following Preſident, 'Tis an anſwer given by *Edw.* 1. unto the Pope, who had lately made a damand of the Arrears of that annual Rent formerly reſerved upon the

Surrender and Reconveyance of the Crown and Kingdom, by and unto King *John*, *Se ſine prælatis & proceribus Regni non poſſe reſpondere, & quod jureſtrando in Coronatione fuit aſtrictus, quod jura regni ſui ſervaret illi bata, nec aliquid quod tangit diadema ejuſdem regni abſque ipſorum requiſitos conſilio facere.* Afterwards, the Parliament adviſing of the Propoſition, affixed to their Diploma, *Nec permittimus, nec aliqualiter permittemus, ſicut non poſſumus, inſolita, indebita prejudicialia & alia inaudita prælibatum dominum Regem etiam ſi vellet facere ſeu modo quolibet attemptare.*

Rot. Clauſ. 3. Ed. 1. *m.* 9. *in Scedulum.*

Vid. Coo. 4. *Inſt.* 13. and 40 Ed. 3.

It is moſt apparent by Law and Preſident, that the two Houſes are not ſo altogether inſignificant or uſeleſs, but that they had this Power eſtabliſhed by Law, and ought to be conſulted for their Power of Adviſe and Conſent, in the higheſt Concernments of the Kingdom, and they were not merely paſſive, but were enabled to exert their power, and to demand and juſtifie their Rights againſt the Innovations of King or Pope, againſt the ill and deſtructive Practiſes of wicked and unnatural Counſellors to King and State, that they have ever acted with an unprejudiced deſign for publick Good. And 'tis from undeniable proof made evident, the King cannot diſpoſe of the Crown, or the Regalities thereof, without having the Concurrence of this great Counſel; that they interpreted and intruſted the power in the King for publick Good and Safety. The Kings themſelves have all confeſſed and allowed their Power, and it may be obſerved they were never in perfect Peace or ſecurely happy, when they incroach'd too much upon, or invaded the Peoples Liberty too far; and that though at ſometimes againſt an overawing and forcible Injury, they did furniſh themſelves with ſuitable Defence in order to a Remedy, they never perſiſted beyond the demand or deſiſted ever, when they had obtain'd the Aſſurance of their Liberty, and Caution for their Freedom, and had not they interpoſed between the Kings Weakneſs, the Clergies Treachery and Ambition, and the Pope's Power, this Monarchy and Kingdom had not only been tributory and inſlaved, but long ſince, converted into the Poſſeſſions and Demeans of St. *Peter*'s Patrimony. And it was apparent, that the King's acting to the Abridgment of the Peoples Rights and Liberties, contrary to Oaths and Promiſes, ſcandalized and weakned the Obligation of thoſe Oaths that were reciprocal betwixt them; and by ſo doing, frequently incur'd the Sentence of the Church, and when the ordinary Methods of their Counſel would not avail, and the Practices of the State have run high in their prejudice, they have petition'd, remonſtrated, aſſociated, and reſolutely oppoſed all unjuſt and arbitrary Aids and Taxes, and have ſometimes with more than ordinary Obſtinacy, withſtood all Inſinuations that might have miſled them into ſuch Complyances. And by their continual Claim did aſſert *inter alia*, undeniable Right for the furniſhing all publick Money, which they gave ſparingly, yet ſeaſonably, ſufficiently, honourably, for the Emergencies of the Crown: for 'tis not as the Lord *Burleigh* told Queen *Elizabeth*, looſe Shifts, ſubtile Projects, nor accidental Profits, that can ſupport the Grandure and ſe-

LL. Inæ. Camb. *Will.* 1. 27 Eliz. *confirming the aſſociation.*

Vid. rem. 4. Car. 1. *Full. Ephe- parl.*

ſecure the State of any Prince; but ſolid, ſerious and weighty Counſels and Supplies; They were moſt zealous in all neceſſary foreign Wars to ſupport the Royalty and Grandure of their Soveraign, and moſt diligent and jealous in the Maintenance and procuring the Obſervation of their Laws and Liberties at home, obtaining Oaths, Proclamations, and other Inſtruments to that end; nor were Wars regularly made without their Counſel, *Cook's Inſt.* on *Mag. Char.* 538. *Speed.*

Grafton 221, 222, 223.

13 *Ed.* 1.

We will conclude, that though that may ſeem to have been ſometimes too importunate and violent, yet we muſt allow of this on Truth, that they did not always complain without a Cauſe, ſince ſometimes the Kings themſelves were then Witneſſes of their own miſdoing, as is atteſted in the Speech of *Ed.* 1. made to his Parliament, *Erumpentibus lachrymis veniam de Commiſſis humiliter poſtulavit dicens ſe minus bene & tranquilliter, quam regem deceret ipſos rexiſſe.*

Mat. Par. 909.

And by this paſſage of *Ed.* 3. where the King in his Proclamation ſaid, that he did diſſemble with his Parliament, only to gain his own ends, and therefore by Proclamation would have contraveen'd the Actings of that Parliament.

15 Ed. 3. 50.
See before in Speech *Hen.* 1.

But to obviate and anſwer ſome clamours that may be made againſt this Diſcourſe of Right and Liberty, as if I intended to encourage and introduce a riotous Freedom and Liberty.

Obj. In order to the giving a Reply, I ſhall conſider theſe Rights,

Anſw. Firſt, as they are either general, and ſo concern the whole collective Body, or ſecondly, ſpecial, as they relate to every individual Subject;

and in both I ſhall limit it to a Liberty guided and warranted by Law; For, though Liberty be a precious thing, yet 'tis dangerous to them that are not a Law unto themſelves, eſpecially in opinion, for that arraigns the Rule, and leaves the way open to Licentiouſneſs, and thus ſprang up the Inſurrections under *Kade* and *Jack Straw*.

Freedom in the firſt ſenſe, I define to be an Intereſt and Power of the People, by common and ancient Right, to adviſe and aſſent to thoſe meaſures that ſhall be taken for the general good and ſafety; and to juſtifie this ſenſe, this whole Diſcourſe is an intire Comment.

2. Freedom ſpecially conſidered; I take it to be, The Quiet and Peaceable enjoyment of the Goods of Nature and Fortune, according to the eſtabliſhed Laws of this Kingdom, as they concern the ſeveral Capacities and Conditions of men in the Sacred and Civil State;

I ſay, a quiet and peaceable Enjoyment (to prevent Tyranny, Rapine and Oppreſſion) of the Goods of Nature and Fortune, as they reſpect Liberty and Property, according to the Laws of the Realm: the Laws agreed to by King and People, in prevention and oppoſition of all Arbitrary Innovation.

As they concern the ſeveral Capacities and Conditions of men: that is, as they are provided and fitted to Office or Degree to our Governours: to the Lords or Commons; In the Sacred or Civil State: both in the Concernments of Religion and Policy.

Obj. 2. 'Tis objected, this pretended Freedom is inconſiſtent with, and utterly deſtructive to the Monarchy.

Anſ. The truth of this Objection or Suppoſition, is not onely utterly unreaſonable, but is indeed almoſt impoſſible, if we conſider the ſtate of our Monarchy, and the Circumſtances of that great Council, as they relate to that Form of Rule.

A Kingdom is a Society of men joy'nd under the Government of a ſingle Perſon, for common Good. The King and People make one Body; He, as the Head, and as Superiour, affords Senſe and Motion, the People, as inferiour, confer Nouriſhment and Strength; they have the ſame Intereſt, and are inſeparable in their Condition, be it good or evil, ſo that if the Means and the End be ſet in oppoſition one to the other, it muſt needs cauſe an Impotency and Defect in both, for the Perfection of all things conſiſts in the End (God onely is his own End.)

The Kings of *England* have alwayes had a Monarchy Royal, not Seignoral, where, under the firſt, the Subjects are Freemen, and have propriety in their Goods and Freehold, and Inheritance in their Lands; but under the laſt, they be Slaves, and have propriety in nothing.

Here the Law is the Boundary that meaſures between the King's Prerogative and the Peoples Liberty; 'tis the Legal Union of Allegiance and Protection· and being confirmed by a Perſonal Union and ſtipulation, ratified by Oath on both ſides, the Incorporation cannot be diſſolved without the deſtruction of them both. This yet will be more apparent, if you allow the People to value and reſpect their Intereſt, their Safety, or their Politie.

1. As to Intereſt. The Lords and Commons, the ſubject of this Diſcourſe, are undoubtedly the great Body of this Nation, Proprietors and owners of much the greateſt part both of the Riches, and of thoſe large Territories and Poſſeſſions that appertain unto this ſpacious Empire, which, under the diſtribution of Laws by Regal Power, are diſtinguiſhed and continued in their ſeveral Proprieties and Enjoyments; all which, by any ſuch ſuppoſed Alteration, become unſettled, and are the Property of the next Invader. This is unqueſtionably evident, (even to my perſonal damage and experience) from the Uſurpations in the late Rebellion: For when once the Rule is forſaken, we run amain down the Hill, nor doth any man think that diſhoneſt in him, which hath been profitable to another. Covetouſneſs will adminiſter fuel unto Cruelty, and the proportion of mens Offences ſhould riſe to the value of their Wealth, ſo that conſequently whoſoever was rich, muſt be guilty, and ſo every man become the price of his own danger; neither would any thing be ſcrupled that could be imagined gainful, for that breach once made, every man hath a like Intereſt in every thing, ſo that we cannot reaſonably think they will ſo far act againſt themſelves, nor become Deſertors and Aſſaſſines of that Law and Intereſt, that has coſt both them and their Fore-fathers ſo much Sweat and Blood, which is onely preſerved in

Safety, in the preſent eſtabliſhed Form of Government.

2. If we allow them to reſpect their Safety, *Ubi Judicia deficiunt, incipit Bellum, & par in parem non habet dominium*; where there is no poſitive obligation to obedience, there is unwilling and negligent ſubmiſſion to Command. That which is every man's Duty, is no Body's Buſineſs, and where a man is not accountable, or reſtrain'd by Law, he will or may tyrannize according to his Power. The ſtrength and power of the whole Nation is both unſuitable and unſerviceable to its preſervation, being ſcatter'd, diſunited, and diſorderly, not being united under a Head, to reſiſt Invaſion from abroad, and to prevent Commotion and Diſturbances at home. King. anſ. to 19. Propoſit.

Quem vocet Deum populus, Ruentis
Imperi rebus---- Horace, *Ode* 2.

The Anſwer made by the Repreſentatives of *Scotland to Edw.* 1. who claimed the Superiority of that Kingdom in the time of the Controverſie between *Bruce* and *Baliol, &c.* ought not to be omitted, That they were ignorant that any ſuch Superiority belonged to the Kings of *England*, neither could they make anſwer to ſuch things without a King, the Head, upon whom it lay to hear ſuch a Denunciation, and proteſted, that other Anſwer they ought not as then to give. *Tho. Walſin.* in vita Ed. 1. Speed 635 19.

3. In reſpect of Policy, it cannot be imagined ſo many men ſo intereſted for their own Welbeing and Safety, ſhould put themſelves voluntary into an abſolute ſtate of Anarchy and

Confuſion; For in the aboliſhing of Monarchy, they at the ſame time aſſaſſinate their Laws, and run themſelves into Horror and Diſtraction, even the Foundation of the great Councel, and Court of Parliament, is *ipſo facto* demoliſhed, and they have neither Method or Power to convene or aſſociate for publick Safety; for a Parliament cannot be held, unleſs the King be perſonally, vertually, or repreſentatively preſent; by *Protector*, *cuſtos regni*, or Commiſſioner, their preſent Laws are all ſuſpended, and quite unſerviceable to any other State of Rule, and have no farther Signification or Power either to aſſert or defend their property; the King only being intruſted for the general Benefit, to diſtribute Juſtice by that equal and unerring Rule: neither is there any Preſident in our own (or ſcarce in foreign Story) to countenance ſuch an impolitick and weak Suggeſtion. Tis true, ſeveral of our Kings have been judged incapable of that Adminiſtration, when by their own Conſents they have waved the Government. But ſtill the Election or Aſſignation of another, was ſo inſtant and immediate, that there never was *interregnum*, and our Law ſays, cannot be, the people rather chooſing to ſubmit to ſuch a Power, though veſted only with a pretended Right (as was evident, beſides others, in all the times of the inteſtine Controverſies between *York* and *Lancaſter*) than hazzard the ill Conſequences of an unexperienced, imperfect, and unaccuſtomed form of Rule.

1 H. 4. *n.* 1, 2. 3. 1 H. 5. *n.* 16. 4 *Inſt.* 46.

Speed 951.

The *Scots* did pretend a right, to depoſe of their King *Bono publico.*

If we make a ſmall Digreſſion, and look into foreign Story, we ſhall find the practice of moſt other Nations, will juſtifie the Aſſertion:

and I dare yet farther with Confidence aſſert, that no Republick at this day, can claim any other Beginning or Original, but what it muſt undeniably aſcribe to either Neceſſity or Chance.

To one or both theſe Cauſes, we may aſcribe the Original of the united States, who declared King *Philip* by his too violent Government againſt their priviledges (whereunto he had ſworn) to be an Enemy unto their State and Peace, and therefore upon breach of Covenant, *Spee.* 1113. to have fall'n from his Intereſt amongſt them. 167.

The Reſignations of that moſt eminent and renowned Emperour *Charles* 5. made to his Son *Philip*, and Brother *Ferdinand*, neither occaſion'd *Interregnum*, or Diſturbance in the Empire, or any other the Eſtates in his Dominion, *Cum* *Strad. de* Cæſar *rerum molem ſuſtinere diutius pro dignitate,* *Bell. Belg.* *quæ ſe imperiumque deceat, haud poſſet, mature* *lib* 1. 57. *tranſferet in* Philippum *filium ætate ac ſapientia* & 59. *tanto oneri parem. Itaque*, Cæſarem *quod ſibi, quod Regi, quod provinciis bene vertat omni ſe* Belgi Burgundiæque *imperio abdicare, juratam ſibi fidem populis remittere,* Philippo *filio* Angliæ *Regi, jus poſſeſſionemque* Belgi Burgiæque *ex animi ſententia tradere, & duobus menſibus interjectis, majori hominum celebritate, Regnis, provinciis, inſuliſque tam in novo terrarum orbe exuens ſe* Cæſar, *eorum ſemel omnium poſſeſſionem, & jura* Philippo *filio addixit, & non multo poſt Imperii Coronam Sceptrumque* Ferdinando *fratri, multis ante annis Regi Romanorum Creato tranſmiſit.*

Childerick was deprived by the Eſtates of *De Serres* *France, Pour remedier a la confuſion du Rayaulme* his *Fran:* *viſiblement nee de la neantiſe de leur Royes concluent* 118.

de rejetter Childerick *& de eſlire Pepin, l'un indigne de regner a cauſe de ſes Vices & l'autere tres digne d'eſtre Roy pour ſes uraymènt Royals Vertues.*

Ibid. 175. 185. The people of *France* conceiv'd ſo great Averſion and Diſguſt againſt King *Charles le gros*, for alienating and diſmembring the Demeans and Poſſeſſion of the Crown, *&c.* that by *Commune deliberation ſe reſolurent de depoſer & en mettre une plus-utile en ſa charge, chaſcun en ſon pais ſelon les deſtroits, dechaſſe de ſon palais.*

1 C. 5. *Charles* 3, was by the Eſtates of *France*, conſtrain'd to quit his Crown, who transfer'd the Power and Scepter into another Family, againſt the accuſtomed Law of Diſcents of that Country.

Ibid. 593. The Charter made by *Charles* the Sixth of *France*, to our renowned King *Henry*, the fifth runs, *Qu'en eſtabliſſient une firme & libere repoſe aux deux Royaulmes de* France *& de* Angliter *en contemplation de marriage de* Catharine *de* France, *il eſt declare regent du Royalme, du vivant du Roy* Charles, *au quel le tiltre de Roy demure, & a ſa femme Iſabeau letitre de Royne leur viedarant: mes que tantoſt apres, le treſpas du & deſtors avant la Couronne & Royaulme de* France, *avec toutes leur droits & appurtenances, demeurcront, & ſerront perpetuelment à lui ſon tres chere & tres ayme fits & a ſes heires in Chiefe*; This had the King's Oath and States Conſents to make it more authentick.

Hiſtor. of the troub. of *Swede.* & *Poland.* The States of *Sweeden* in the years 1540. and 1544. altered their elective Monarchy, and eſtabliſhed the Crown, to deſcend by Inheritance; yet after aſſumed the Power to deprive King *Erick*, and elected *John* his Brother, Duke of *Finland* to the Throne.

'Tis the general Practiſe and Cuſtom of all States in elective Kingdoms, to regard the next in the right Line, unleſs known to be incapable or unworthy of ſo great a Power, as is apparent in *Hungary*, *Bohemia*, and was in *Swedeland*, *Denmark*, and *Ruſſia*, before they became hereditary; and at this day in *Germany*, the Reſpect to royal Blood, has been in ſome States ſo liberal, that they in the Caſe of a Baſtard to a Prince, becauſe well born, he was ſuppoſed lawfully born, as in the caſe of *Teucer*, and according to *Servius Regiæ conſuetudinis fuit, ut legitimam uxorem non habentes, aliquam licet captivam, tamen pro legitima haberent, & liberi ex ipſa natu ſuccedent*; See after, for *Hen.* 7. Queen *Eliz.* and diverſe before the Conqueſt.

Euſtath on *Homer.* A. 8. *Il.* *Hollinch.* *lib.* 17. *ca.* 13. 398.

After that, *Sigiſmund* elective King of *Poland*, but of *Sweden* by the former mention'd Right, breaking his Vow, and Oath of Coronation, and more eſpecially, violating Faith in the great matter of Religion, they would not acknowledge him any longer, for their Lord and King, or be thenceforward obedient, or ſubmit unto his Government, but denounced him, and reaſſumed and diſſolved their Oaths of Fidelity and Obedience, wherein they had been hitherto bound by Law and hereditary Union. And afterwards, they made Duke *Charles* his Uncle King, and intailed the Crown npon his Family and Iſſue, deprived the ſaid *Sigiſmund* his Son, and Brother, of all preſent or future claim and pretence unto the Crown, with this ſpecial clauſe, They would prefer none unto the Throne, that ſhonld not be of the ſame Religion with them, and that any one that ſhould act any

Hiſt. trou. *Swede.* and *Poland.*

thing againſt the eſtabliſhed Religion, ſhould be deprived.

The Realm of *Portugal* in a ſhort Tract of time, makes pregnant proof, tho the People may change the Perſon, they cannot aboliſh or depact with the Conſtitution of their Government, eſtabliſhed in a Monarch.

The Kings in our own Country even after Deprivation, have not loſt their Name, nor wholly their Honour and Eſteem, as may appear in the Proceſs againſt *Mortimer*, who was impeached of Treaſon, for the Murther of *Ed.* 2. in *Berkley* Caſtle, after his Reſignation and Depoſition.

The Nation after the late Rebellion (that dreadful State-Convulſion) was in a continued Ferment and Commotion, in a reſtleſs Agitation and Endeavour, under all the Appearances and Umbrages of Power, to reduce it ſelf unto it's Original Inſtitution; and under God, I think we may impute his Majeſties happy (and otherwiſe miraculous Reſtauration) rather to the general Influence of the natural conceal'd Principle, and Genius of the Nation, than appropriate or aſcribe it to any outward or apparent Cauſe, (I ſpeak not this to derogate in the leaſt from the Glory of that (now happy) perſon that was the fortunate Medium, to unite thoſe ſcatter'd Atomes, and give them Conduct to their deſired end) for the Reſtitution of the Government in the perſon of his moſt ſacred Majeſty, whom God long preſerve.

I ſhall only ſtrengthen my Aſſertion, that a Parliament cannot oreturn the Monarchy, ſince by their own act they have declared in full Parliament, upon a demand made of them, in behalf of the King, that they could not aſſent to any thing in Parliament, that tended to the Diſinheritance of the King and Crown, which by Oath they were ſworn for to preſerve.

Rot. Parl. 42. Ed. 3. *no.* 7. *Coo.* 4. *Inſt.* 14.

May his ſacred Majeſty long live to enjoy his Crown, and ſway his Scepter, may his Councels be ſafe and proſperous, his Performances attended with Victory and Succeſs, may he poſſeſs the full prerogative of his Crown, and fix this royal Maxim of the King his Father in his Memory, to guide it; * that the Prince may not make uſe of this high and perpetual power, to the hurt of thoſe, for whoſe Good he hath it, and make uſe of the name of publick Neceſſity, for the Gain of his private Favourites, and Followers for the Detriment of his people; for it was his own ſaying, † that he ſerved him beſt, that ſerved him with Honeſty and Integrity, and declared it as his Axiom, that the peoples Liberty ſtrengthens the Kings Prerogative, and the King's Prerogative is to defend the peoples Liberties——*Bene enim cognoſcimus quod cum veſtro Conſilio fuerit ordinatum id ad beatitudinem noſtri Imperii & ad noſtram gloriam redundare.*

* King's anſ. to the 19. Propo.

† Kings Speech at paſſing the Pet. of Right.

I ſhall not interpoſe or any way concern my ſelf to intermeddle in that, the now call'd grand Queſtion of my || Lords the Biſhops Power in criminal Caſes, it not being material to my ſubſequent diſcourſe of the Parliament's Power, as the moſt ſupream Court of Judicature; for if they have power they will only add unto the number of the Judges, or if none, it will not detract from the Weight or Validity of the Court or Sentence. I ſhall only with all Modeſty

|| Although I do not intermeddle in the Queſtion of Biſhops voting in Sanguinary Cauſes, yet by good Authority, I may determine, that the King, Lords, and Commons, may hold a Parliament without them, and make good and binding Laws. *Crompt. Juriſd.* Cort. 19.

ſty, preſent my Reader with the following Admonition of a former dignitory of the Church, probably in that day uſed on the like occaſion of Diſpute, *Quidam Epiſcopi regum munificentias & elimoſunas antiquorum abuſive Baronias & Regalia vocant & in occaſione turpiſſime ſervitutis ſeipſos Barones appellant : vereor ne de illis quereletur dominus & dicat ipſi regnaverunt, & non ex me, principes extiterunt & ego non cognovi ; ſcias te aſſumpſiſſe paſtoris officium non Baronis, certe in* Ægypto Joſeph *patrem & fratres ſuos inſtruxit ut dicerent Pharaoni viri* paſtores *ſumus, malluit eos profiteri paſtoris officium, quam principis aut Baronis,* &c. *vacuum à ſecularibus opportet eſſe animum, divine ſervitutis obſequio conſecratum,* &c. *illud cæleſtem exaſperat iram & pleriſque diſcrimen æterne damnationis accumulat, quod quidam principes ſacerdotum & ſeniores populi, licet non dictant judicia ſanguinis, eadem tamen tractant diſputando ac diſceptando de illis, ſeque adeo immunes à culpa reputant, quod mortis aut truncationis membrorum, Judicium diſcernentes, à pronunciatione duntaxat, & executione penalis ſententiæ ſe abſentant, ſed quid hac ſimulatione pernicioſius eſt : nunquid diſcutere & diffinire licitum eſt, quod pronunciare non licet ? certe* Saul *multiplici machinatione tractabat, & ut malitiam ſuam ſub umbra innocentie palliaret dicebat non ſit manus mea in eum, ſed ſit ſuper eum manus philiſteorum, ſane quantum ſimulatio hæc excuſabat apud homines tantum apud deum eandem damnabilius accuſabat.* Expreſſa *ſimilitudinis forma in Conſiſtorio illo in quo Chriſtus ad mortem damnatus eſt pharaſei & ſcribe dicebant, nobis non licet interficere quenquam, cumque tamen clamarent dicentes, crucifige, ſententiam in eo occiſionis cruente maligni-*

tate

Canon Epiſcopalis tractat. de Inſtit. Epiſcop. Biblia patr. Tom. 12. *pars* 2. *pa.* 942. 944.

Oſea 8. 4.

Gen. 48. 38.

1 *Reg.* 18. 17.

Job. 18. 9.

tate dictabant, quem occidebant gladio lingue publice proteſtabantur ſibi occidere non licere, eorumque iniquitas eo ipſo deteſtabilior erat, quia ut evaderent humanum judicium, eum ſimulatione occultabant. Animabus prælatus es, non corporibus, nihil prælato commune eſt cum Pilato Chriſti villicus eſt & vicarius Petri, nec reſpondere oportet Cæſari de commiſſa tibi juriſdictione ſed Chriſto, Quidam tamen per uſurpatas ſeculi adminiſtrationes ſe vinculo curiali obnoxiant & quaſi renunciaverint ſuæ privilegio dignitatis, calculum durioris eventus expectant.

2. We are now come to conſider the Parliament, as it is the higheſt and moſt general Court of Judicature of the Nation, and then it conſiſts of the King and Houſe of Lords, (tho the King therein, neither votes nor judges, but only executes the Sentence of that Court) for the King is uſually there in perſon, and ever by Repreſentation in his Abſence, as appears by the old Entries of Records and Rolls, call'd, *Placita coram domino Rege in Parliamento ſuo* unleſs in matters that paſs by Bill which more properly fall under the third and laſt Diſtinction.

Exact abrid. of Recr 377. 397.

This Court is ſo generally allowed of, and it's Power approved, and ſo well underſtood by men of moderate Senſe, that I ſhall not need to be tedious in my Authorities, to prove, or in preſident, to illuſtrate the propoſition.

If we look back into the ancient *Saxon* Story, we ſhall find their Nobility eſtabliſhed and continued by a threefold manner, by Birth or Blood, by Valour, and by Wiſdom. And that they were in great Power, for the Adminiſtration of Affairs in time of Peace or War, either, 1. Collectively in their great Counſel, for giving ſudden order for any particular part or member of the Common-wealth, or 2. A part, and that was in their *Iturs per pagos vicoſque.* There they did conſult and determine of meaner Matters concerning Property, and conſequently, were intereſted and aſſociated with the publick Miniſters in all the inferiour Courts of Judicature, and in the Buſineſs of defenſive War, as the Commands were veſted in themſelves, and laſtly, in the ſudden and extraordinary Affairs of State, unworthy the Aſſembly of the people, in their Wittagenmote.

Mir. cap. 5. *Sec.* 1. But their too general power was ſoon after their Arrival here contracted, and Limits thereto affix'd, and they were only Authoriſed by the Kings Writs, or Commiſſions by which they were ſpecially deputed.

King Ed. *c.* 16. Under this Eſtabliſhment it not only took Cogniſance of the great and weighty Cauſes, but ſtooped to meaner Game by removing Cauſes by the King's Writ, from the rural Judicatories to their ſublimer Termination, where the King as the Oracle of the Court, obliged himſelf, *Judicium rectum in regno facturum, & juſtitiam per concilium procerum regni ſui tenturum.* Glanv. *lib.* 2. *c.* 6. 78.

It is manifeſt, it was a ſettled Court of Judicature, for that Fines were therein levyed, and Writs of Right determined, the Entry of the Judgment in the great caſe between the King of *Navar* and *Caſtile* was, *Commites & Barones regalis curiæ adjudicaverunt.*

The Honour and Employment of that Court was high and great ſo long as the Nobility made it their Buſineſs to attend thereon; but there were ſeveral things of an indifferent Mixture between Deſign and Chance, that by degrees impaired, or quite defac'd the proſpect of its Glory.

Kings were become jealous of their Greatneſs and thought their Influence too general and publick, as taking Thought for private Intereſt, judged private Counſels thereto, more ſubſervient, the Peerage Negligent, or overtoyled in Buſineſs, grew more remiſs, or elſe by Emulation and Ambition, divided the Authority, and by Diviſions, began to looſe Eſteem, and leſſen, and their Grandure to decay, and by piecemeal, quitted much of it's juridical power to the three Courts of Law at *Weſtminſter*, the *King's-Bench*, *Common-Pleas*, and the *Exchequer*; and of the remainder of it's Ruines, gave the beginning, or at leaſt, a great increaſe of Power and Buſineſs unto the Privy-Councel.

Thus periſhed that ancient and rightly honourable grand Councel of the Lords, having firſt laid aſide the publick, next loſt their Unity, and laſtly, much of their popular Intereſt and Eſteem.

The Senſe of State contracted into a privy-Councel, is eaſily recontracted into a Cabbinet-Councel, and laſt into a Favourite or two; thus by it's decay, it advantaged the royal Power, and at the ſame time made the Commons of this Nation, happier than any other people, their Equals, in admitting them to the Tryals of their Peers, or Jurors; whereby, as before, they had a part in the Legiſlative, they now attained the juridical power alſo, and ſo (under God) became poſſeſs'd of an abſolute Dominion over themſelves and their Eſtates.

And laſtly, This Receſs or Decay occaſion'd the more frequent Neceſſity of calling Parliaments, the repreſentative body of the Kingdom, in which Convention or Aſſembly at this day, they all have liberty of meeting and free voting without Impeachment, and then are ſtill the ſupreme Court of Judicature of the Kingdom.

1 *Hen.* 4. *Rot. Parl. n.* 79.

In the firſt of *Henry* the Fourth, the Commons made this Proteſtation, *Come les jugements du parliment appertiegnent ſoulement au Roy & ſeignieures & nient aux Communes.*

And Horn *Mir. c.* 1. *pag.* 89.

Our *Saxon* Kings, after the Land was divided placed *Commites* over the ſeveral Counties, and for fear the King ſhould wrong or harm his People, though he have no Peers, it behoved to have Companions of Right, to hear and determine in Parliament, of the Wrongs of King, Queen, *&c.* who otherwiſe could not have common right; this was made a Law by King *Alfred.*

Hoveden pag. 433.

In the tenth of *William* the Firſt, *Epiſcopi Comit. & Barones regni regia poteſtate ex diverſis provinciis, ad univerſalem Synodum pro cauſis audiendis & tractandis convocati ſunt.*

King's anſ. to the 19. Propoſit.

The Lord's duty and Power is to the ſame Purpoſe aſſerted by the late King, the Lords are truſted with a judicatory Power, and are an excellent Skreen and Bank between the Prince and People, to aſſiſt each againſt any Incroachment of the other; and by juſt Judgments to preſerve that Law which ought to be the rule of every one of the three.

Coo. 4. *Inſt.* 24.

The Commons, as grand Inquiſitors and Counſel of the Kingdom, may Enquire of, Impeach and Tranſmit, Delinquents of all ſorts in Parliament to the Lords houſe their only Judges.

At the Tryal of the Earl of *Strafford*, the Commons prayed the Lords to give Sentence againſt him in a judicial way, and when after they proceeded by Bill, they then declared, they did it not to avoid their Lordſhips Judgment in a judicial way, but for preventing Doubts and ſpeedier diſpatch.

The Houſe of Lords ſhall remedy all Offences contrary to the Law of *Magna Charta*, and where no remedy is left or Judgment by Law, the matter ſhall be determined in Parliament, and the King ſhall command Execution to be done according to the Judgment of the Peers.

15 Ed. 3. *c.* 1.
15 Ed. 3. 3.

Having eſtabliſhed our Court of Judicature in point of Right, upon the ſure Foundation of the Law; in the next place, we ſhall furniſh ſome variety of Preſidents, that may evidence in Fact, and practice the Exerciſe of that power.

At a Parliament held at *Caerleon* by King *Arthur*, to a Demand made by *Lucius Tiberius*, Procurator of the *Roman* Commonwealth, of a Tribute pretented to be reſerved by *Julius Cæſar*, when he conquered *Brittain*; they returned in Anſwer, that it was acquired by Force and Violence, ſo could not juſtly be poſſeſs'd by any, they giving Commencement to their Claim by Force, and that it was from an unreaſonable Cauſe, that they became tributory, wherefore they did deny to pay, or to allow the ſame.

Galfr. Mon. Hiſt. reg. Brit. lib. 10. *c.* 1. to 14.
Speed. 272.

Antiq. Brit. pa. 94. 95. The Difference between the two Arch-biſhops of *Canterbury* and *York*, was remitted from *Rome* to this Judicature, by *Alexander* the XI. *Quia conſuetudinibus, & privilegiis ac privatis Epiſcopatus inſtitutis, certius quam jure ſcripto definire poſſe videbatur, decretum eſt à papa ut à Rege & Regni Proceribus adjudicaretur, & adjudicatum fuit.*

Mat. Paris 666. 667. The Lords did adjuſt and comprimiſe the difference *inter Henry* the Third and *Alexander* King of *Scots*. For the Land granted to him from King *John*, he was to receive *anuatim* 300 *l*. *Sine caſtri conſtructione hommagiumque regi Angliæ faceret & fædus inter eos ſanctieretur & hoc ſe fideliter facturum Regi Angliæ, & conſervaturum juraret.*

Ro. Hoveden, *pars poſt* 596. 597. They gave final Judgment *inter Henry* the ſecond, and *Roderick* King of *Canaught* in *Ireland*, concerning his Kingſhip, Royalties, Dominions Services, Homages, and Tribute due to the ſaid King *Henry*.

33 Hen. 8. 25 Hen. 8. 12. Sometimes they gave judgment of Affairs in *Ireland*, and lett their Sentence to be executed by the Judges there, as in the caſe of the *Coperceners* of the Earl-Marſhal, 33. *Ed*. 1. and may do at this day, for that Kingdom may be included in general Words, or in a ſpecial Act of Parliament in *England*. *William Longshamp* Biſhop of *Ely* was made Protector of the Kingdom by *Richard* the firſt before his Expedition to the Hoveden 702. Holy Land; during the Kings Abſence, he was depos'd, *Omnibus Epiſcopis Committibus & Baronibus regni, ne talis de cætero in regno* Angliæ *dominetur, per quem Eccleſia dei ad ignominiam, & populus ad inopiam erat reductus, ipſe & Ganeones ſui totum regnum exhauſerant, nec viro baltheus, nec fœmine monile remanſit* &c. *theſaurum quoque Regis*

gis exaninaverat prorſus, ut in omnibus Scriniis vel ſacellis nihil præter claves de toto illo biennio poſſit inveniri.

Earl *Richard* the Kings Brother, being the Realm was, much aggreived by calling in the *Poictovines*, as *Peter de Rivallis* &c. *Cum magnatibus affirmabat tamdiu ſe à Regis Conſilio ſubtraherent, quamdiu alieginarum Concilio frueretur, & quum petrus Epiſcopus* Wintonienſis *dixit quod bene licuit domino Regi, extraneos quoſcunque vellet vocari ad defenſionem Regni ſui & Corone, & etiam tot & tales qui poſſunt homines ſuos ſuperbos & rebelles ad debitum compellere famulatum, magnates perturbati à curia recedentes cum aliud non poterant habere reſponſum, firmiter promiſerunt ad invicem, quod pro hac cauſa que omnes tangebat uſque ad diviſionem corporis & anime, viriliter decertarent*: three Summons to Parliament were ſleighted, becauſe they doubted of their Liberty and Safety, perſiſting in their Reſolution, that unleſs the King would diſmiſs his evil Counſel, they would not only refuſe to meet in Parliament, *ſed de Communi Conſilio totius Regni ipſum cum iniquis ſuis conſiliiariis à regno depellerent, & de novo Rege creando contrectarent.* But after meeting in Parliament, they made this following Addreſs unto the King, as the Judgment of their Houſe.

Mat. Paris 381. 382. 383. in *temp.* H. 3. *Spec.* 585.

Domine Rex dicimus nobis in domino, ut fideles veſtri, quod conſilium quodnum habetis & quo utimini non eſt ſanum, nec ſecurum, ſed crudale & periculoſum vobis & regno Angliæ, *Petri videlicet* Wintonienſis *Epiſcopi, & etri de Rivallis & Complicium ſuorum.*

'Imprimis, Quia gentem Anglicanam odio 'habent, & contemnunt, vocantes eos *Proditores*

‘ & facientes omnes ſic vocari avertentes animum veſtrum ab amore gentis veſtræ, & corda noſtra & gentis noſtre à vobis, quod apparet in *M*--- qui melior homo eſt terræ veſtræ, quem per mendacia interſeminata à vobis elongantes perverterunt, & per hoc idem conſilium, ſcilicet per dictum Epiſcopum amiſit pater veſter Rex *Johannes* primo corda gentis ſuæ, deinde Normaniam poſt alias terras & in fine totum theſaurum exhauſit ------- & fere dominium *Angliæ*, & nunquam poſtea dominium habuit.

‘ Per idem conſilium temporibus noſtris, turbatum fuit regnum, & venit interdictum, & denique factum eſt regnum tributarium, & princeps provinciarum (proh dolor) factus ignobilis ſub tributo, & innita guerra & diu protracta, mortuus eſt pater veſter quaſi extorris, nec in pace regni vel animi, & ſic mortem incurrit admodum periculoſum.

‘ Per idem conſilium multum Theſaurum in diverſis bellis, & ſtrenuos homines perdidiſti, ob quam cauſam Rupellam, in ignominiam totius regni amiſiſti.

‘ Item, Perturbatio nunc imminens toti regno periculoſa, per eorum conſilium iniquum accidit, quia ſi per juſtitiam & rectum judicium terræ tractati fuiſſent homines veſtri, non eveniſſet iſta perturbatio, & haberetis terras veſtras non deſtructas nec theſaurum exhauſtum.

‘ Item, In fide dicimus qua nobis aſtringimur obligati, quod concilium veſtrum non eſt pacis, ſed perturbationis terræ, quia ſic creſcere volunt qui per pacem non poſſunt, ſcil. per regni perturbationem & aliorum exheredationem.

‘Item, quia caſtra veſtra & fortitudinem ve-‘ſtram habent in manu ſua quaſi de gente veſtra ‘diffidere debeatis.

‘Item, Quia ſcaccarium veſtrum & omnes re-‘ditus veſtras & eſcheatas habent in ſua poteſta-‘te, placet talis expectatio,& quomodo vobis re-‘ſpondebant in fine ut credimus comprobabis.

‘Item, Quia niſi per ſigillum veſtrum, vel ‘preceptum ſine ſigillo, Petri de Rivallis, vix ‘aliquod magnum negotium fit in regno, quaſi ‘vos pro rege non haberent.

‘Item, Quia per idem conſilium naturales ‘homines de regno veſtro, de curia veſtra, ex-‘pulſi ſunt, unde timendum eſt, tam de vobis, ‘quam de regno, cum videamini, magis eſſe in ‘eorum poteſtate, quam ipſi in veſtra, ſicut per ‘plurima conſtat exempla.

‘Item, Quia Puellam de Britannia & ſoro-‘rem veſtram habent in poteſtate, & alios plu-‘res puellas nobiles, & alias mulieres nubi-‘les quas dant ſuis & diſparabant.

‘Item, Quia legem terræ juratam & confirma-‘tam,atque per excommunicationem corrobora-‘tum, pariter juſtitiam confundant & pervertant.

‘Item, Quia non ſervant alicui fidem vel ju-‘ramentum.

‘Hæc autem vobis dicimus, & coram deo & ‘hominibus conſulimus, rogamus, & mone-‘mus, ut tale Conſilium amoveatis à vobis, & ‘ſicut eſt in aliis regnis conſuetudo, regnum ve-‘ſtrum tractetis per fideles homines veſtros & ‘juratos de regno veſtro.

‘Rex humiliter poſtulavit inducias, quod ‘conſilium ſuum non poſſit tam ſubito amoveri ‘donec de Theſauro ſuo rationem audiſſet.

They ſoon after, met again in Parliament, *Ut regno perturbato ſalutem providerent*, and upon their repeated Motion, the King being made ſenſible of his Error, diſmiſſed them, and added Threats againſt *Rivallis*, that if he had not been in holy Orders, he would have put out both his Eyes. *Et ſic rex diſmiſſis iniquis Conſiliariis ſuis, revocavit ad obſequium ſuum naturales homines de regno, per quos ſperabat regnum ad ſtatum proſperum revocare.* And when he had reſtored himſelf to theſe honeſt Counſels, *Tunc primum intelligent, quod primum fuerat ſeductus, aſtutia conſiliariorum.* The Effect was no leſs happy, the civil Diſſentions ceas'd thoſe traiterous Counſellors, being removed from King and Court, put from their Truſts and Offices, publickly arraign'd before the King, impriſoned, their Eſtates confiſcated, and only ſcaped Death by the Immunity of their Order, and better Counſellors and Officers were ſubſtituted in their places.

Obſ. It may not be ungrateful from what hath been offered in the foregoing Peſident, to make ſome particular Remarks, and enquire a little into the Nature and Neceſſity of the Privy-Counſel, it having long time obtain'd a very conſiderable ſhare in the Diſpatches of the great Affairs of State.

36 Ed. 3. *m.* 3. *in dors.*
27 Ed. 3. *St.* 2.
28 Ed. 3. *c.* 13.
4 *Inſt.* *Court* Pri. *Counſe.*

The natural and original power of this Counſel is obſcure, ſeveral have been uſed occaſionally, that have deſerved that name in reference to the Parliament (which is the moſt publick, and always had a general Intereſt in all the grand Cauſes of the Kingdom) as may be ſeen by Variety of Authority.

But my Intent is to ſpeak of it as it call'd the Counſel Table, and aſſembled in a Chamber, ſignifying thereby rather power of Adviſe than Judicature.

Nations do meet with Exigencies as well as Perſons, and under ſuch Condition, Reſolutions taken up by ſudden Conceit, are many times more effectual than more mature Deliberations, which require more time to their compoſing, are more ſlow in Concluſion; let ſlip Opportunies, and fall ſhort of Expectation in the end, ſuch are the ways of Debate in the grand Repreſentative of the Kingdom.

And moreover, That in putting the Laws in Execution, greater Diſcretion is required, than can poſſibly be the Portion of any one ſingle perſon, and greater Speed than can ſtand with the Debate amongſt many; ſo that without doubt the Conventicles of Counſels are no leſs neceſſary in their degree, than the Aſſembly of the Eſtates of this Nation in their grand Convention; but ſtill with this Caveat or Proviſo, That one Genius Act in both, leaſt the Motions of Government be inconſtant or inconſiſtent.

But this Counſel, however neceſſary and uſeful in the Theory, is liable to Exceſs, and ſometimes error in the Practiſe, they, are as it were, the Breath of the King's own Breaſt, which ingenders many times ſuch fervent Motions for Prerogative, they need allay, to qualifie their Heat, and the paſt Experience of it's Ambition may adviſe us, that it's pre-

tences have been irregular; it was not ſatisfied with the Gleanings or Fragments, in the Ruines and Rubbiſh of the great Counſel of the Lords, but by degrees, began to challenge to hold the Ballance in all Courts of Law within their own Order, and then contrived ſuitable proceſs, to aſſiſt the ſame, admitting Suggeſtions againſt any man on Articles at Councel-table, and thereupon, granting and awarding Attachments and Sequeſtrations, to the Vexation of the People. The Parliament were occaſion'd to conſult a remedy to theſe and ſuch like miſchiefs, for their Adviſe operating ſo immediately upon the Perſon of the King, and by Reflection, working upon the People ſo far as the exerciſe of their Power extends; the Parliament did interpoſe to qualifie their
14 Ed. 3. Influence, that it might be beneficial to the
n. 55. Nation, ſo that where they have obſerved
50 Ed. 3. the major or more conſiderable part of that
n. 10. Aſſembly, drawing towards a Faction or De-
1R.2 n. 51. ſign (as an act of Duty) they have recom-
3 R. 2. 34. mended in their Receſſes ſuch perſons to the
5 R 2. 17. King, as might reduce thoſe Councels into a
6 R.2. 19. better form, and frame them as the Epitome
8 H. 6. and to the exemplar of the grand Counſel of
n.8 12.14. the Kingdom; and leaſt they ſhould cor-
5 H. 5. 16. rupt the King's Deſires, or pervert his Pur-
11 H. 4. poſes by flattering and falſe Adviſe, they
15 Ed.3.3. have order'd Inquiſitions into their Actions,
2 H. 6. and laid Reſtraints upon their Practiſes, and
n. 15. cenſur'd their Miſcarriages. For though 'tis
29 H 6. ſaid, occaſional Inquiries breed ill blood,
n. 16. though no Attainder be, and indeed one not

ca-eaſily ~~or other~~ undertaken with good Succeſs the contrary would work the Cure, and not be maligned, being once reſolved into a common Courſe. 'Tis moſt certain, if the motions of the grand Officers of the Kingdom be irregular and unqueſtionable, it matters not what the Rule be.

Parl. 21. Ed. 1. *pla.* 17.

The Arch-biſhop of *York* was condemned of high Contempt againſt the King to the Diſinheriſon of his Crown and Dignity, for excommunicating the Biſhop of *Dureſme* in the Eccleſiaſtical Court for a temporal matter, and adjudg'd to pay 4000 Marks unto the King.

14 Ed. 1.

This Court may not only puniſh according to the uſual Penalties of the Law, but they may aggravate the Sentence, and encreaſe the Puniſhment, as in the caſe of *John Hall*, who was condemned to be hang'd, drawn, and quarter'd, for murthering the Duke of *Glouceſter* bewixt two Feather-beds, in 1 *Hen.* 4.

The Biſhops and Clergy by the Inſtigation and Inhibition of the Pope, refuſing to aſſent to ſupply the King with any Aid or Tax, were, by Judgment of the Lords, put from the Kings Protection, and the Parliament held without them.

Exact Abrid. 376. 7. 8.

Richard, Earl of *Arundel*, to an Impeachment of high Treaſon, pleaded his Pardon, which Plea was diſallowed, becauſe his Pardon was revoked in Parliament, but he inſiſting thereon, without betaking himſelf to other Defence, had Judgment, as convicted of the Crimes.

William de Valentia Brother in Law to *Hen.* 3. lately baniſhed out of the Realm by Judgment and Sentence of the Lords, was not admitted to return, though in Company with the Prince; but on Condition, *Vt Baronum proviſionibus in omnibus obediret*, which he afterwards refuſing to obſerve, *Vnanimiter Conjurarunt quod nunquam Regi conſentirent in uno, donec quoſdam non nominandos à ſuo Conſilio amoveret*, in purſuance whereof, they put themſelves in Arms, until the King baniſhed the Delinquents, *&c.*

Ed. 2. The Lords gave Judgment againſt the *Spencers*, for compelling the King to rule by Rigor, after the irregular Motion of their Wills, for withdrawing him from harkening to the Adviſe of his Lords, for hindring Juſtice, and for puniſhing by penal Laws, which Judgment was confirmed by Parliament, and had the variety of being repealed and confirmed diverſe times, until at laſt it ſtands in Force.

Obſ. Penal Laws are good Remedies if they be uſed *in terrorem*, but if enforced beyond that Rule, the Remedy proves worſe than the Diſeaſe: in their firſt Inſtitution, they are Forms of Curteſie from the People to their King, but in the rigorous Execution of them are Tryals of Maſtery in the King over the People, and are uſually laid up or kept in memory, for their Promoters againſt a day of reckoning.

11 H. 7. *cap.* 3. repealed by 1. *H.* 8. *c.* 6.

The Petitions againſt *Empſon* and *Dudley* the Caterpillars of the Kingdom, were feelingly regarded by the King, and a Proclamation iſſued for encouragement of all Complainants though they had the King his Fathers hand to juſtifie their Actions; and the Pretence of their Employment was for the Service of the Crown.

In the 11*th.* of *Richard* the Second, the Parliament then meeting at *Weſtminſter*, entring into the Debate of publick Buſineſs, and in Aid of good Government, the King diſguſting their Proceedings being too ſevere againſt the great Miniſters of State, then in Favour, forebore his Preſence, in their Aſſembly, contrary to Law and Uſe, received in Meſſage from the Lords, *Quod niſi maturaret, juxta condictum, quod elegerint alium ſibi regem, qui vellet & deberet obtemperare Conſiliis dominorum.* And when on the next day, the King came into the Houſe, *Dixerunt pro honore ſuo & Regni commodo, oporteret ut proditores, ſuſurrones, adulatores, & malefici detractores, à ſuo pallatio & comitativa eliminarentur.* Whereupon, ſundry Lords, Biſhops, Clergy-men, Knights and Ladies, were expell'd the Court, others impriſoned, in order to anſwer their Offences in Parliament: in the number of Delinquents, *Michael de la Pool* Earl of *Suffolk* Duke of *Ireland*, *Treſilian* Chief Juſtice, *&c.* were condemned to Death or Baniſhment, and forfeiture of Lands and Goods, and their Offences are on Record, for that during the King's Minority by ill Counſel of thoſe near his Perſon, there were great Oppreſſions and Miſcarriages in Government, and whereas in Aid thereof, in the 10*th.* of the ſame King, at the Parliament then, a Commiſſion was award-

10R.2.*c.*1.
11 R. 2.
1. 2.
publiſhed
27 *Aug.*
1622.

awarded to twelve Peers, to ſee to the better Execution of the Laws, and regulating the former Miſdemeanours and Abuſes, the endeavouring to vacate or fruſtrate this Commiſſion, authoriſed by the Parliament, pretending it granted in Derogation of the royal Power, was the chief Crime for which they ſuffered, though they alledged the Opinion of the Judges for their Indemnity and Juſtification.

Obſ. Private Families are no farther under publick Law, than in Relation to the publick Peace, to puniſh after Breach made, but the Families of Kings are looked upon by all, in Relation to the Honour and Profit of the publick, and who by their nigh Attendance upon his royal Perſon, may have ſuch prevailing Influence over his Actings, as may affect the publick with a prejudiced and malevolent Aſpect, if they be not ſuperſeaded by a reſtraining Power. Moreover, the royal Family trenching deep upon the honour of the Kingdom, and Purſes of the People (who are concerned to ſee the ſame accommodated ſuitable to the ſtate and port which the Nation would ſeem to carry in the World) have been inſpected, and queſtion'd in Parliament; ſo that the King's Confeſſor and other familiar Domeſticks, have been removed and puniſhed: Mr. *Noyes* Collection printed by Mr. *Pryn.*

3 R. 2. *n.* 31. 11 R. 2. *n.* 23. 5 R. 2. *n.* 17. 18. *Rot.Parl.* 3. Ed. 3. *n.* 10. to 17. 5 & 6 R. 2. *Rot. Parl.* 4 H. 4. 11. H. 4. *&c.*

Obſ. So that we may infer, though Juſtice was ſometimes perverted or obſtructed, and the very Foundation of our Laws and Liberties, aſſaulted and undermined, and all the

Efforts of Artifice, Strength, and Policy, practiced and encouraged, that any way ſeem'd to gratifie or nouriſh the Ambition and Exceſſes of ſome diſtructive Minions of the State, the Wiſdom and Integrity of our Foreſathers, the vertue of the Nation did at laſt manifeſt it ſelf, and did oppoſe the Ruine, and has hitherto, left us, our Laws, and their happy Examples, for Imitation in all deſigns, againſt their Safety. I willingly and of purpoſe omitted to tranſcribe the Stories of ſome of the perſons of late mentioned, more at large; and of the Methods uſed to ſecure them ſometime from the Juſtice of the Nation, leaſt I might have been cenſured to have introduced their Hiſtory to Reflection, I find this ſeverely charged for one, *Quia Regem ducebant pro ſuæ voluntatis arbitrio in tantum, quod nec bonos* &c. *nec quicquam valuit expedire ſine horum concilio & favore.*

The Lords Spiritual and Temporal claimed their Franchiſes and Priviledges, *viz.* That all weighty matters that ſhould be moved in the Parliament, touching the Peers of the Land, ought to be diſcus'd, adjudg'd and determined by them by the Courſe of Parliament, and not by the Civil, nor yet by the Common-Law of the Land, uſed in other Courts of the Realm, the which Claim and Liberties, the King moſt willingly allowed and granted thereto in full Parliament. As in the caſe of the Earl of *Northumberland*, when the King took his Petition for Pardon into his particular Conſideration, aſſiſted only with his Judgment

11 R. 2. *Rot. Parl. n.* 6. 7.
5 H. 4. *Rot. Parl.* 10. to 14.

es, the Lords made their Proteſtation, that the Order thereof belongeth only to them, as Peers of Parliament, to whom the Judgment appertain'd, and in that caſe adjudg'd accordingly.

4 *Inſt.* 23. 3 *Inſt. p.* 148. In the Parliament of the 18 and 24 *Jacob.* Sir *Francis Bacon*, Lord Chancellor of *England*, Earl of *Middleſex*, Lord Treaſurer of *England*, were impeached and convicted of Bribery, Corruption, and other Miſdemeanours, removed from their places, fined (*Middleſex* 50000. *l.*) impriſoned, and withal made incapable of any Office, and thus cenſured by Judgment of their Peers.

Their Power lies in Caſes of Writs of Error in the Diſputes of Commoners, as well as Peers, upon erroneous Judgments, touching their real or perſonal Eſtates, Lives, Limbs, or Liberties of perſons, upon indictment or Attainder, in all which Caſes, the Lords are Judges, the Returns upon the Proceedings on ſuch Writs, are only before the Lords in the upper houſe, *Secundum legem & conſuetudinem Parliamenti.* I ſhall not enlarge in thoſe memorable Caſes of *Robert* Duke of *Normandy*, or of Earl *John*, afterwards King of *England*, and Duke of *Clarence* the King's Brother.

*Speed.*662. 19 Ed. *d.* *El. kenc.* *Spee.* Ed.4.

I ſhall only offer ſome few Authorities, where they have given Judgment in the caſe of the Commons, and paſs to my third Conſideration of the Parliaments power.

Judge *Thorp* for taking Bribes, to the value of a 100. *l.* was ſentenced to be hang'd, *Quia ſacramentum domini Regis, quod erga populum ſuum*

ſuum habuit, cuſtodiendum fregit malitioſe falſe & rebelliter, that Law declared to continue in Force only againſt ſuch, (*viz.* Juſtices) *Qui prædictum Sacramentum fecerunt & fregerunt, & habent leges* Angliæ *ad cuſtodiendum.* This Judgment was afterwards confirmed, their Oath is yet the ſame, but the Law ſomewhat altered, as appears in Rotul. Parl. the eleventh of *Henry* the Fourth, *nu.* 28. *Cook* 3 *Inſt.* 146.

Exact Abrid. 79.
24 Ed. 3.

Henry de Bathonia a Juſticier, ſentenc'd for Bribery, *Et quod unum facinoroſum convictum & incarceratum, abire permiſit impunitum opimus reſpectus muneribus*, and fined 2000 Marks.

Mat. Paris 785.

Sir *Thomas Wayland* Lord Chief Juſtice of the *Common-Pleas*, attainted of Felony, for taking Bribes, his Lands and Goods confiſcate, and he baniſhed the Kingdom, as unworthy to live in that State, againſt which he had ſo highly offended.

Obſ. Though Covetouſneſs in a Judge is a heighnous Crime, and ſo deſervedly puniſhed, yet Ambition is the more dangerous Extream or Error, for it is violent, and runs, while Covetouſneſs is making of a Bargain; and there is no ſuch Bondage, as when Laws of Freedom are miſinterpreted, to make men Slaves; for unjuſt Proceedings on unjuſt Grounds, are double Injuſtice. And 'tis undeniable, that arbitrary Judgments deſtroy the Common Laws, and in them the two great Charters of the Kingdom, which being once loſt, we have nothing left, but the bare falſe name of Liberty.

Proem to 2 Inſt. Coo. p. 2. & 3.
Hub. de Ric.

This high Eulogie is given to *Richard* the

Spe. 1751. *n.* 11.

Firſt, thrt he did ſhew his Care and Love of the *Engliſh* Nation, as alſo of Juſtice it ſelf, for that many of his Juſticiers were of the honourable Peers of the Land, and not men bred up, or formerly inured to make Juſtice, or their own Tongues venal for a Fee. And that which was obſerved of Sir *Robert Treſilian*, Chief Juſtice, that he was a man ready under the King's Protection to deliver Judgment without reſpect of Titles, is ſaid to be the conſtant humour of the Lawyers, to judge according to the Will of the greateſt.

Indeed, This high and honourable Court of Peerage, has ever been the Rampart and Defence againſt ſuch violent Attaques, and the ſure Scourge of ſuch as durſt attempt againſt them, as might be evidenced by their proceeding, yet in memory in the great Caſes of Shipmoney, Committments, *per ſpeciale mandatum Domini Regis*, &c. 1627.

Exact Abrid. 36. 2. 1 H. 4. *Rot. Parl. n.* 91.

Sir *Thomas Haxey* was adjudg'd to dye in the twenty firſt of *Richard* the Second, for preferring a Petition to the Commons, againſt the Vices and outrageous Expences of the Court, by Biſhops and Ladies; but afterwards, in the firſt of *Henry* the Fourth, the King with the Advice and Aſſent *de toutes. les ſeignieurs ſpirituels & temporels*: Upon his Petition, and the Petition of the Houſe of Commons, ſhewing, that the firſt Judgment was, *Encontre droit & la Cours, quel avoit eſtre uſe devant in Parliament & in anientiſſiment des Cuſtomes, des les Communes*, order'd and adjudg'd, that the Judgment againſt the ſaid *Thomas* ſhould be void, and he reſtored to his name and Fame notwithſtanding.

This next and laſt is in a caſe of a Duel by order between Sir *John Anſley* Knight, and *Thomas Ketterington* Eſquire, for a Crime committed beyond Sea, not here tryable; at which the King and Parliament were Spectators, which for it's Rarity I have inſerted.

On the Morning of the day appointed, they fought before the King, Lords, and Commons, till both were tyred, and lay tumbling on the Ground, where the Squire got upon the Knight, as if he had the Victory; others ſaid, the Knight would riſe again, and renew the Combat, and worſt the Squire; *Interea Rex clamari pacem precepit & militem errigi*, the Knight refuſed to be liſted up as the Squire was, deſiring he might be laid upon him, for he was well, and would gain the Victory, if he was laid upon him again: when he could not obtain his Requeſt, being liſted up, he went chearfully to the King without Help, when as the Squire could not ſtand, but as two held him up, and thereupon was ſet in a Chair to reſt himſelf; the Knight when he came before the King, *Rogavit eum & proceres, ut ſibi illam concederent gratiam, & iterum eum in loco quo prius, poſſet reponi, & armigerum ſuper eum, Rex vero & proceres cum vidiſſent militem tam animoſe, tam vivide bellum repetere, & inſuper magnam ſummam auri offerre publice, ut id poſſit effici, decreverant eum iterum reponendum, & armigerum ſuper eum, modo univerſaliter ſervato, quo jacuerant ante proſtrati.* But the Squire in the mean time in a Swound fell out of the Chair, as dead, between the hands of thoſe

Walſ. hiſt. Ang. 245, &c.

that ſtood by him; whereupon, many running to him, chaſed him with Wine and Water, but could not recover him till they pull'd off his Arms, *Quod factum & militem victorem probavit & armigerum eſſe victum*; after ſome ſpace, the Squire reviving, opened his Eyes, and began to lift up his Head, and to look terribly on every one that ſtood round him, which the Knight being inform'd of, went preſently to him in his Arms, which he never put of, and ſpeaking to him, *Et proditorem & falſum appellans, & querebat ſi iterum vellet Duellum repetere ille vero nec ſpiritum habens nec ſenſum reſpondendi, clamatum eſt pugnam finitam & ut quiſque ad propria remearet*, the Squire was carried to Bed,and died the next morning.

To conclude, The propoſition is not only proved, but the Reaſon given in the Law, in the firſt of *Henry* the Fourth, which ſays, that the Houſe of Peers being aſſiſted with the Adviſe of all the Judges of *England*, the Kings learned Counſel, and others, able to adviſe them in all Criminal, Civil, and Eccleſiaſtical Matters and Caſes that come before them were in this Regard, thought fitter by our Anceſtors and Commons themſelves, to have the principal and ſole power of Judicature in all civil and criminal Cauſes, as well of Commons as Peers, that are proper for the Parliament Judicature by way of Conſent or Redreſs. But in the 4. *Edward* the Third, the Lords by Proteſtation, with the King's Aſſent, did Judge and Decree, that though in ſome weighty, and Caſes of high Conſequence, they had given Judgment againſt the Commons, yet for the time to come, ſhall not be bound or charg'd to render Judgment upon others, who are not their Peers, nor yet to do it, but upon the Peers of the Land, but that they ſhall from henceforth be quitted thereof.

Sometimes the King did intermeddle in Cauſes of the Peers, admitting of a Hearing before himſelf, and giving Sentence without the Lords, which they proteſted againſt, as contrary to their Priviledge, and in Derogation of their Power, as in the Caſe of *William de la Pool* Duke of *Suffolk*, where the Lord Vicount *Beaumont* in behalf of the Nobility, and by their Advice, Aſſent, and Deſire, did manifeſt that this that ſo was decreed, proceeded not by their Adviſe and Conſent, but was done by the Kings own Demeaner and Rule, wherefore they beſought the King, that this their Saying, might be enacted in the Parliament Roll, for their more Declaration hereafter, with this Proteſtation, that it ſhould not be nor turn in Prejudice, nor Derogation of them their Heirs nor of their Succeſſors in time coming, but that they may have and enjoy their Liberty, as they and any of their Anceſtors and Predeceſſors had, and enjoyed before this time.

26 H. 6. *Rot. Parl. in* 14.

Coo. 3. *Inſt.* 22 North. *Caſe.*

5 Hen. 4.

So that it is fully proved by Law and Preſident, that this is the moſt ſupreme Court of Judicature, for the matters therein adjudged, *viz.* all weighty matters to be moved in Parliament, 2. For the manner of their Proceedings, as neither guided or confined to the Rules of the common or civil Law,

11 R. 2. *Rot. Parl. n.* 6· 7.

5 H. 4. *Rot. Parl.* 10. 11. *&c.*

Sed ſecundum leges & conſuetudines Parliamenti.

Ki. Car. 1. Anſ. to the 19 Prop. I have now paſs'd my firſt and ſecond Conſideration of the parliamentary power, and I hope I have fully proved in the firſt, that by undoubted Right, the eſtabliſhed Laws of this Realm, and the Preſidents of all Ages, they are in theſe two Notions, eſſentially concerned in the Government, and under the firſt of theſe Acceptations, they as the great Counſel, ought to adviſe and conſent, 1. by way of proviſion, of what Supplies may by them be judged expedient and neceſſary to ſupport our publick Safety. 2. By way of prevention, to obviate and oppoſe, or otherwiſe to adviſe, to divert the Injuries and Aſſaults that may probably occaſion or introduce a general Ruine.

3. By way of Caution, for the ſupporting of their power, and the preventing the Innovation upon their Rights, they may unite themſelves by Oath, Aſſociation, &c. In the Maintenance only of their Laws and Freedoms.

Anſw. to the 19 Propoſit. 2. That under the ſecond Conſideration, as the great Court of Judicature of the Kingdom, they have Power to declare and execute the Laws for the ſame ends, and are in this Capacity, conſtituted and ſuppoſed to be an excellent Bank or Skreen between the Prince and People, to prevent Oppreſſion and Injury from the Prince, and to hinder Irregularity and diſorderly Commotion in the people.

I ſhall now enter upon my third Diſtinction of the parliamentary Power, as it is in the Legiſlative Capacity, Conſiſting of the Agreement and Act of all the three Eſtates, King, Lords, and Commons,

mons, to make it binding, it imports no leſs than the united Conſent of all and every Perſon of the Kingdom; and under this Notion it's power is unlimitted and univerſal, it's Authority is the moſt unerring and firm Support of Monarchy and Government, and has been ever uſed as the only expedient, to accommodate the Differences of Pretenders and Competitors, to arbitrate and decree not only the Right and Poſſeſſion, but the Inheritance and Reverſion of the Regal Power, to ſuccor and defend the King and Kingdom againſt all Poſſibility of Injury or Incroachment that might be pretended againſt or uſurped upon it or his Authority; to decree the Nations Liberties, aſſertain Property, and to eſtabliſh an unqueſtionable Peace and Security to all the people, both from the danger of Grievances at home, or the Aſſaults of foreign power.

In this Capacity, it hath power above the Law it ſelf, having power to alter the Common Law of *England*, to declare the meaning of any doubtful Laws, to repeal old Patents, Grants or Charters, and Judgments whatſoever of the King, or any other Court of Juſtice, if erroneous or illegal, not only without, but againſt the King's perſonal Conſent, ſo far as finally to oblige both King and People, to puniſh Offenders of all ſorts, corrupted Religion, either to diſanul or reform it. *Ralph Hollingiſh*, *Cap*. 8. *vo*. 1. *p*. 173.

I ſhall confine my Diſcourſe to thoſe matters that relate to the Diſpoſition and Eſtabliſhment of the Imperial Crown, in the following preſidents you may read the Laws of the title to the

Crown, and the orders of the power thereof.

The good Laws we enjoy, and Priviledges ſecur'd to us by our Statutes, are Evidence ſufficient to prove their Authority that made them.

During the time of the *Saxons* and *Daniſh* Rule, nothing will appear more interrupted and uncertain, than were the Titles and Succeſſions of their Kings neither can we eaſily conclude, or aſſuredly define, under what Rules they transferred the poſſeſſion of the imperial Crown; where Conqueſt and Election were ordinarily preferred to Inheritance and Deſcent. To *Alfred* the brave, the 24*th.* Monarch of the *Engliſh*, ſucceeded *Edward* the Firſt, his Son, and after him, *Athelſtan* his Baſtard was elected, and preferred before *Edmund* his Legitimate Iſſue. And though *Edmund* after his Diſceaſe, entred upon the Government, yet his two Sons *Edwy* and *Edgar* during the Life of their Uncle *Edred*, and by his interpoſing were defeated of the Kingdom: Afterwards, by the Favour of the People, they were ſucceſſively inſtated in the Throne, and the Sons of *Edred* ſet aſide. In the ſpace of two years, *Edwy* was depoſed, and ſo made ſpeedy way for the Pretences of his Brother *Edgar*, whoſe Son, by his firſt Wife, named *Edward*, was barbarouſly murthered, to make way for *Ethelred* Brother by a ſecond Venter. The Character of whoſe Reign, was not unſutable to the means he uſed to obtain the Scepter; his Entrance was by Blood, the middle miſerable, and the end Confuſion. Nor was the Succeſs of his Poſterity more proſperous, for *Edmund* his Son ſurnamed *Iron-*

Daniel 24.

ſid

ſide, firſt loſt half his Kingdom, and afterwards, the whole was made the Purchaſe of *Canutus*, by his Conqueſt; who the better to enſure his new-got State, baniſhed, and Spee. 338. deſigned to murther the two Sons of *Edmund* together with his Brother *Edwy*, to prevent all future Competition and Diſturbance, yet could not inſure the Kingdom to his lawful Iſſue *Hardicanute*, againſt whoſe Iſſue, *Harold* being a Baſtard, uſurped the Crown: upon whoſe Death, the *Engliſh* Nobility enacted, that none of the *Daniſh* Blood 394 Sp. 3. ſhould any more weild the *Engliſh* Scepter.

After twenty ſix years, the Crown again reverted to the *Saxon* Race by the Election of *Edward* call'd the Confeſſor, (Son to *Ethelred*, who came in by the Murther of the right Heir) to be King. After whom again *Edgar Abeling* was outed and diſappointed by *Harold* Earl of *Kent*, who was conquered and ſubdued by *William* the Firſt, Spee. 432. (commonly miſcall'd Conqueror) who in 54. his laſt Will expreſſeth, he had gotten a royal Diadem, that none of his Predeceſſors wore, not by right of Inheritance, but by heavenly Grace, and did not conſtitute any Heir unto the Realm of *England*, but commend it unto the everlaſting Creator, whoſe I am; for I poſſeſs not that Honour by any Title of Inheritance, but by the Inſtinct of God, the Effuſion of Blood, and the Perjury of *Harold*, yet, wiſh, if it be the Will of God, that *William* my Son may flouriſh in the Throne of that Kingdom, yet notwithſtanding his Bravadoe, he rather conquered *Harold* than the Kingdom, to which he was admitted by Agreement and Stipulation.

Fox vol. 1. p. 217. *Spee.* 432. 54.

Of this firſt *William*'s Title and Poſſeſſion of the Crown I need not add, he took an Oath at Coronation, to confirm King *Edw.* 1. Laws beyond what has been before alledged, ſo content my ſelf to mention the matter ſince that period.

Spee. 449. *Mat. Par. hiſt. p.* 12. 13. &c.

William Rufus, ſecond Son unto his Father, his eldeſt Brother then alive, by his Father's laſt Will, and the Election of the States and People attain'd the Crown, and was in Choice preferr'd before his Brother, by the means of the Clergy firſt, and after of the People, and continued to enjoy the ſame againſt his Brother, upon a Compoſition agreed in Parliament betwixt them, *viz.* To pay D. *Rob.* 3000 Marks of annual Penſion; for tho the Crown was deſigned to him by his Father, the Right and Poſſeſſion was left unto the people to determine and maintain; and by Oath did Condition to abrogate the hard Laws of his Father, promis'd to obſerve Juſtice, Equity, and Mercy, throughout the Kingdom in every Buſineſs, and eaſe them of their hard Taxes, if they would chuſe him King.

Mat. Par. 52. 53. 54. *Speed* 450. 1.

After the Death of this ſecond *William*, *Robert* Duke of *Normandy*, being then abſent in the holy Land, gave way to *Hen.* 1. to claim the Crown, *Et Congregato* Londiniis *clero* &c. *& populo univerſo promiſit emendationem legum, quibus oppreſſa fuit* Anglia *tempore patris ſui*, &c. *ſi illum in Regem ſuſciperent & patronum. Ad hæc clero reſpondente & magnatibus*, &c. *Quod ſi animo volenti ipſis vellet concedere & Charta ſua Communire illas Libertates & Conſuetudines antiquas* *tiquus quæ floruerunt in regno tempore Regis* Edwardi, *in ipſum conſentirent, & in Regem unanimiter elegerint & conſecrarent, & poſtea Communi Conſilio regni Rex eſt Coronatus*; And the ſame year marryed *Maud*, Daughter to the King of *Scots*; by the Advice and Conſent of Parliament.

Duke *Robert* after his Return from the Holy War, making a demand upon his Brother, of the Kingdom, they ſubmitted the Diſpute unto the Parliament, by whoſe Authority it was decreed, *Quod* Robert *propter manifeſtum* *Mat.* Paris
jus quod habuit ad regnum poſſidendum, ſhould 55.
yearly receive from *England*, 3000 Marks, and that the longer Liver of them ſhould be Heir unto the other, if he dyed without Iſſue Male, *& hoc per magnates* 12 *juratum fuit utrumque.* Duke *Robert* afterwards, contrary to the late Eſtabliſhment, attempting againſt his Brother, became his priſoner, and was by the Peers, *Puderoſe & immani morti adjudicatus*, Henricus *De Eudat.*
vero frater ejus non ſuſtinens Ignominiam tantam Angl. *lib.* 2.
protendere in ſanguine ſuo inſtitit Barones & im- *ca.* 8.
petravit ab eis quod prædictus Robertus *debet exoculari & execari cum bacillo ardenti, ſicque apud* Lincolniam *perpetuo carcere mancipatus*, a heavy Sentence againſt the King's Brother, but unjuſt if the Crown be inheritable meerly.

Obſ. The firſt *William* came in by Arms, under the Color of a Title, 2. by a kind of Title under the Colour of Arms, the laſt by Favour, but all of them entred by Election, Capitulation, or Stipulation.

Stephen Earl of *Bloyes*, (*Maud* the Empreſſes Daughter, and Heir to the late *Henry*, and her Son, being both alive) ſteps into the

Throne

Mat. Par. 71. 73. *Speed in com. R.Stephen* 468. &c.

Malm. p. 179.

Spee. 497. *Mat. Par.* 82. 83.

Throne, and lays a faſt Gripe upon the Crown and Scepter, *Et Communi Conſilio* Angliæ *Rex eſt electus & Coronatus, & omnes qui filiæ Regi* Henrici, *& ſuis Heredibus juraverunt, fidelitatem & conſenſum* Stephano *prebuerunt*; And in perſuance of his Oath of Coronation in his Parliament at *Oxford*, he confirm'd the Charters of the peoples Laws and Liberties with ſeveral beneficial Clauſes and Additions in the Charter, and in it acknowledged his Title by Election. The Diſputes and Differences between himſelf, *Maud*, and her Son *Henry*, touching the Poſſeſſion, Right, Deſcent, and Inheritance of the Crown, were neither few nor weak. On reference they were accommodated in a Parliamenr at *Wallingford*, wherein it was enacted, that *Stephen* ſhould adopt and conſtitute *Henry* his Son, Heir and Succeſſor to the Crown, immedietely after his Diſceaſe, that K. *Stephen* ſhould quietly poſſeſs the ſame during Life, and that *Henry* ſhould be Chief Juſtice, and Ruler of the Kingdom under him.

Speed 484.

Henry the Second after the Death of *Stephen* enters into the Government by the former Agreement, Adoption and Decree in Parliament made betwixt K. *Stephen*, the Nobles, and himſelf; his Mother being alive, to whom the preſent Claim by Inheritance did more nearly appertain.

Richard 1. ſucceeds his Father, (but his entrance, ſay ſome, was upon an Election in the life-time of K. *Henry*, the which the Nobility confirm'd, by rendring Homage to him, in the life-time of his Father, the diſquiet this Election occaſion'd to his Father, is remarkable, and makes it queſtionable, whether he much depended ed on his inheritable Title; and he may be rather ſaid to come in as Succeſſor or Surviver, taking Poſſeſſion in his Fathers Life time againſt his Will of what was deſign'd to him afterwards by ſpecial Compact, at his Coronation ſwore, that all the days of his Life, he would bear Peace, Honour, and Reverence to God, and holy Church, and the Ordinances thereof. 2. That to the people committed to his Charge, he would exerciſe Right, Juſtice, and Equity. 3. That he would aboliſh naughty Laws and Cuſtomes, if any were brought upon his Kingdom, & would enact good Laws, and the ſame in good ſort keep, and without Male engine.

Speed 514. 5.

We may hence conclude, he did not believe the Inheritance of the Crown do deſcend of Right, and unavoidably, becauſe he deviſed the ſame by Will, to Earl *John* his Brother, againſt his Nephhew *Arthur*'s Right, Heir to his Brother *Geofry* Duke f *Britain*.

Speed 529. 69.

Hen. 2. by Conſent of Parliament at *Oxford*, diſpoſed the Crown and Kingdom of *Ireland* to *John* his younger Son, although he only uſed the Stile of Lords.

Hoved. pars poſt p. 156.

The next in Story is King *John* who came to the Crown, or at leaſtwiſe took it (notwithſtanding his Brother's Will, and againſt his Nephew *Arthur*'s Right, whom he after murder'd) by Election, and was confirmed by Conſent of Parliament; the inauguration Speech made by the Arch-biſhop at the Solemnity of his Coronation, ſets forth his Title, *Quod nullus prævia ratione, alii ſuccedere habet regnum, niſi ab univerſitate Regni unanimiter invocatus, ſpiritus gratia electus, verum ſi quis ex ſtirpe defuncti Regis aliis prepolleret, pronius & promptius in electionem ejus eſt conſentiendum, at preſaga mente certificatus, quod ipſe* Johannes *reg-*

Mat. Par. 189. 190. *Hiſt. Ang. p.* 189. *Speed* 532.

num & Coronam Angliæ *foret corrupturus & in Confuſionem præcipitaturus, & ut ne haberet liberas habenas hoc faciendi ipſum electione non ſucceſſione hereditaria eligi debere affirmabat, cum conſenſu conſilii unctus eſt in Regem, & triplici involutus eſt ſacramento, quod videlicet ſanctam eccleſiam, & ejus ordinatos diligeret & eam ab incurſione malignantium indemne conſervaret, & quod perverſis legibus diſtructis bonas ſubſtitueret, & rectam juſtitiam in Regno* Angliæ *exerceret, deinde exhortatus & ſtricte prohibitus in parte dei ne honorem hanc accipere preſumaret, niſi in mente habeat, opere quod juraverat adimplere, ad hoc ille promiſit ſe per auxilium dei bona fide ea quæ juraverat ſervaturum.* After which Speech, he was unanimouſly elected, as well in regard of his Merits, as of his royal Blood. Daniel 127. 128.

Coo. 4. *Inſt.* p. 13. 14. 40 *Ed.* 3. King *John* having made an ignoble and unkingly Reſignation and Submiſſion of his Crown and Kingdom to the Pope, to be held under the annual Tribute of 1000 Marks. The Pope ſome time after, by his Miniſters making a demand of the propoſed Arrears of the ſaid Covenanted Tribute upon his Succeſſor *Ed.* 3. had in anſwer from that King in the Aſſembly of Parliament, that neither K. *John* nor any other, could put himſelf, or his Realm, or his People, into Subjection or Tribute unto the Pope, without their common Aſſent; that the Submiſſion he made unto the Pope, was without their Aſſent, and againſt his Oath at his Coronation; and that if the Pope by Force or otherwiſe would attempt to enforce the King or his Subjects, to render him the Services and annual Tributes for *England* and *Ireland* granted to him by K. *John*, they would reſiſt and oppoſe him with all their power; and moreover, that they will ſtand with the Kings Crown and Roylty in all Caſes of the Pope's Uſurpation, clearly in derogation of the King's Crown and Royalty in all points with all their power.

Embaſſadors were ſent into *France*, to treat, from the Parliament or Body of the Kingdom, for that Provinces incorporated into the Sovereignty of *England*, could not, without Injuſtice, be abſtracted from a Nation's common Intereſt, upon whatever pretences againſt any particular; for which cauſe, the patent of the Dukedom of *Aquitane* to *John* Duke of *Lancaſter*, as alſo another to *Robert de Were* Duke of *Ireland*, were not allowed ſufficient to entitle the Patentees until their Grants were made authentick, & confirm'd by Parliament.

Speed 546.

Rot. Parl. 13 R. 2. *no.* 21. *Coo.* 4. *Inſt.* 357.

Hen. 3. an Infant of nine years old, was after the death of his Father King *John*, elected to the Kingdom, *Arthur*'s Siſter being alive and in priſon, who was Heir by an elder Brother too, but all the promiſes and pretences of Allegiance made to *Lewis* of *France* in the Life-time of his Father, they waved and utterly renounced, and betook themſelves to the Obedience of King *Hen. Sicque nobiles univerſi & caſtellani eo multo fidelius quam regi* Johanni *adhæſerunt, quia propria patris iniquitas, ut cunctis videbatur filio non debet imputari*, and did agree becauſe he was King *John*'s natural and eldeſt Son, to appoint him their King and Governour.

Speed 537. 2.

Mat. Par

It happens too oft, that where the Throne is full of a King, and he great in the Opinion of his own Sufficiency and Power, a Parliament is looked upon as a Faſhion out of Faſhion, and us'd for little other than a Shift, when Kings have imbarraſs'd themſelves in Troubles and Incumbrances; but where the Crown is too heavy for the Wearer, through Infancy or Infirmity, the Parliament is look'd upon, as the chief Supporter, in the maintaining, both the Honour and Power of that Authority, that otherwiſe would fall under Contempt. And I may affirm, there is not one Preſident

of any diſagreeing humour in the people, in the Infancy or tender age of any King, for where the Principle of Government reſteth on the Repreſentative of the People, there the Government continues ſtill the ſame, both for Wiſdom, Strength, & Uniformity, for the people cannot be admitted in Minority, tho the Monarch by Deſcent may in ſuch caſes, or in abſence, the Kings have been ſerved by Officers of ſeveral Titles as Warden, Lieutenants, but more lately, in
1 Hen.6. the Title of Protectors of the Kingdom. And tho they have
4 H.6.n.8. been made by Patent or Commiſſion (and of perſons ordidarily,
33 H.6.34. the moſt immediate Off-ſpring of their King) yet
25H.8.22. their Authority was ſubject to the peruſal and Scrutiny of
28H.8.c.7. the Parliament, who according to occaſion, chang'd, enlarg'd,
35H.8.c.1. or abridg'd both it and them; as the Parliament added
the Title of Protector, to that of Lord Warden, formerly conſer'd upon the Duke of *Bedford*, and afterwards in his Abſence, confer'd the ſame upon the D. of *Gloceſter*, with a *Salvo* to the others right: ſo was *Rich*. D. of *York*, declared Protector, in the 32 *H*. 6. *Authoritate Parliamenti.* On the contrary, they diveſted the Biſh. of *Ely*, and outed him of that Power, in *temp. Rich*. 1. and in his Abſence, as may be read before.

The Reſignation of *Ed*. 2. and the Election of his Son *Ed*. 3. not to trouble the long Record of Parliament, is expreſs'd in the ſubſequent Writs ſent to command the peoples Fealties unto the young elected King, *Quia Dominus* Ed. *nuper Rex* Angliæ *pater noſter de communi conſilio & aſſenſu prælatorum & comitum, nec non Communitatum totius regni prædicti, ſpontanea voluntate amovit ſe à regimine dicti* Regni *volens & concedens quod nos tanquam ipſius hæres, &*
Walſ. 328. *primogenitus regni gubernationem aſſumamus, noſq; ipſius patris noſtri beneplacito in hac parte, de conſilio & adviſamento* &c. *ſuſcepimus, dicti Regni & fidelitates accepimus ut eſt moris* &c. We are willing and ſhall be always ready to adminiſter full Right to all Complaints of poor and rich, in our Court of Juſtice.

Spee. 669. Sir *William Truſſel* Procurator of the Parliament, ſpake to the diveſted King, in the name *Totius Communitatis*, as follows: I *William Truſſel* in the name of all the men in the Land of *England*, and of all the Parliament Procurator, I reſign to thee *Edward* the Homage that was made to thee ſometimes, and from this time forward, now following, I defie thee, and prive thee of all Royal Power, and I ſhall
Parl. at never be tendent to thee for King, after this time. It was
Weſt. 16. decreed in Parliament, his Son *Edward* ſhould be elected
Jan. 1325. and crown'd, and that his Father declared himſelf unfit to
govern, for the following Reaſons.

1. Becauſe he ſuffered himſelf to be Governed by Evil Counſel to the dammage of holy Church and his own diſhonor, and for that he would not receive advice of the Great Councel of his Realm, or ſuffer any amends to be made for Injuries done, or wrong ſuſtain'd.

2. By the Influence and Inſtance of the ſame his Evil Councel he acted to the great injury of the Realm, by Committing Outrages and other Inconvenient undue and illegal practices.

3. By male Adminiſtration he had loſt the Realm of *Scotland*, and Lands and Territories in *Gaſcoyne* and *Ireland*, left in peace to him by his Father.

4. By Cruel Uſage and Evil Councel he Impriſoned the Perſons of the Religious, and put to ſhameful Death, Baniſhed, Impriſoned, and Diſinherited divers Noble and Conſiderable Perſons of the Kingdom.

5. For the Covetous deſire he had to profit himſelf, by Evil Councel he ſuffered Juſtice to be delayed and perverted contrary to his Oath at his Coronation, the which he was bound to keep and perform.

6. He put his Kingdom into Wars for the Deſtruction of his People to his Power, and by reaſon of his Cruelty and Incorrigeable diſpoſition, their is no hopes of amendment for his People, *Et ideo cuncti cenſuerunt Regem indignum Diademate, & ideo deponendum.*

Richard the Second before elected *in vita patris & homage* ſworn, and after deſigned by the laſt will of his Father, and ad- *Sp* 707. 151, mitted to the Crown by the Conſent and ſuffrage of the People, after 21. Years of Various and Unconſtant Reign, ſometimes gratifying the People in commanding the obſervation of their Laws, and outed Evil and Wicked Miniſters of State, otherwhiles acted by the Ill Impreſſions were made upon him by pernicious Councels, ſuffering his People to be diſturb'd and aggrieved, under all the ill practices and deſigns of a Corrupt and Licentious Adminiſtration, was at laſt conſenting to reſign his Kingdom, the which he did in the following form, his depoſition was conſented too and Confirmed by Parliament: And *Henry* Duke of *Lancaſter* elected, and by the ſame Power declared King the beſt Argument for his title, and the greateſt inducements probably to the Peoples choice, in this or former Preſidents was the ſecurity of Property and Freedom, which only has its being and preſervation in the continuance of the Monarchy.

Ret. Parl. 1. H. 4. n. 20. *Richard* the Second having in purſuance of his promiſe, reſolved to exhonerate himſelf of the Burthen of his Government, *in ſana libertate exiſtens promiſit domino Thoma Archiepiſcopo Cantuarienſi, ſe velle Cedere & renuntiare Corona Anglia & Francia, & ſua Regia Majeſtate, ex cauſis per ipſum Regem ibidem pro ſua inhabilitate, & inſufficientia confeſſatis, & hoc meliori modo & forma quibus facere poterat*, *prout* &c. *Dictus rex accerſitis ad eum omnibus ibidem preſentibus hillari vultu dixit publice coram illis quod paratus erat ad renuntiationem faciendam, & ad*

renunciandum & ſedandum, ſecundum promiſſionem per eum ut premittitur factum, & ſedulum ſequentem diſtincte perlegit & ſubſcripſit manu ſua propria. In nomine Domini ego Richardus *Dei gratia* &c. *legios homines meos quoſcunq; Eccleſiaſticos vel ſeculares quocunq; nomine cenſeantur, cujuſcunque dignitatis, gradus ſtatus vel conditionis exiſtunt ajuramento fidelitatis, & homagii, & aliis quibuſcunq; mihi factis, omniaq; vincula legeantie, & Regale, ac dominii quibus obligati mihi fuerint, vel ſint, vel alias quomodo libet aſtricti, abſolvo, & eos & heredes ipſorum, & ſucceſſores in perpetuum ab eiſdem obligationibus & juramentis, & aliis quibuſcunq; libero relaxo ac quieto, & liberos ſolutos & quietos, & immunes quatenus ad perſonam meam attinet, dimitto, ad effectum omnem juris qui ex premiſſis ſequi poterit, ſeu aliquo premiſſorum, omniq; regia dignitati & majeſtati & Corona nec non dominio & poteſtati dictorum regnorum, & dominii, aliiſq; dominiis & poſſeſſionibus meis ſeu mihi quomodo libet pertinentibus, ſeu competentibus quibuſcunque quocunque nomine cenſeantur, infra regna & dominia predicta vel aliter ubi libet conſtitutis omniq; juri & colori juris ac titulo poſſeſſioni & dominio, que unquam habui, habeo ſeu quovis modo habere potero in eiſdem ſeu eorum aliquo, vel adea cum ſuis juribus & pertinentiis Univerſis ſeu dependentibus qualitercunq; ab eiſdem vel eorum aliquo nec non regimini & gubernationi in dictorum regnorum & dominiorum hujuſmodi & eorum adminiſtrationi, omnibuſq; & omnimodis mero & mixto Imperio, ac juriſdictioni in eiſdem Regnis & dominiis, mihi competentibus*

vel competituris, nominiq; & honori & Celſitudini Regie, pure, ſponte, ſimpliciter, & abſolute melioribus modo via & forma quibus pottero in his ſcriptis, renuntio & in totum reſigno, acre ac verbo dimitto, & eiſdem cedo & ab eiſdem recedo in perpetuum ſalvis ſucceſſoribus meis regibus Angliæ in regnis & dominiis & cæteris omnibus promiſſis in perpetuum, juribus in eiſdem ſeu eorum aliquo competentibus vel competituris quibuſcunque, meq; ad regimen & gubernationem dictorum, regnorum & dominiorum cum ſuis pertinentiis univerſis fateor. recognoſco, reputo & veraciter ex certa ſcientia judico, fuiſſe & eſſe inſufficientem penitus & innutilem, ac propter mea demerita notoria, non immerito deponendam & juro ad hæc Sancta Dei Evangelia, per me corporaliter tacta quod nunquam premiſſis, reſignationi, renunciationi, dimiſſioni, & ceſſioni contraveniam ſeu quomodo libet Impugnabo facto vel verbo per me vel per alium, vel per alios ſeu contraveniri vel impugnari permittam, quantum in me eſt publice vel occulte ſed eaſdem renunciationem, reſignationem dimiſſionem & ceſſionem in perpetuum ratas & gratas habebo & firmiter tenebo & obſervabo in toto & omni ſui parte, ſicut Deus me adjuvet & hæc ſancta Dei Evangelia. Afterwards he deliver'd his Signet Ring to *Henry* Duke of *Lancaſter* with this aſſurance that if it was in his power the ſaid Duke ſhould ſucceed him in the Government.

The ſaid Duke being elected by the People, that he might not be ſuppoſed to be altogether without pretence of title, he adventured to vindicate and aſſert his right in this form *viz.* In the name of the Father Son and Holy Ghoſt, I *Henry* of *Lancaſter* challenge this Realm of *England* and the Crown, withal the Members and appurtenances for that I am deſcended by right line of the Blood, coming from the good Lord King *Henry* the 3d. and through that right that God of his Grace hath ſent me, with the help of my Kinn and of my Friends, to recover it, the which Realm was on point to be undone for default of Governance, and the undoing of the good Laws, *poſt quam quidem vindicationem & clamium tam domini ſpirituales* &c. *& omnes ſtatus ibidem preſentes ſingillatim & communiter interrogati quid de illa vindicatione & clamo ſentiebant, iidem ſtatus cum toto populo abſq; quocunq; difficultate vel mora ut dux prefatus ſuper eos regnaret conſenſerunt.*

He then calling a Parliament with more than the accuſtomed expedition, inſerted this following clauſe into their ſummons leaſt he might be ſuſpected at his entrance to have incroach'd upon their priviledges. *Quantum autem ad abbreviationem, aſſignationis diei Parliamenti predicti, fuerat pro parte regis proteſtatio talis facta*, viz. *quod non erat intentionis ſuæ, ut ſtatibus regni ſui prejudicium offeretur, exinde nec quod hoc tractetur de cetero in exemplum, quinnimo quod abbreviatio illa fiebat tantummodo pro commodo & utilitate regni ſui & ſpecialiter, ut quorumcunq; legeorum ſuorum parcatur laboribus, & expenſis quodq; ſuper Gravaminibus populi celere poſſit remedium adhiberi.*

Willielmus Thirning *dominus formam ſen-*

tentiæ depoſitionis Richardi *notificavit*, *ac plenius declaravit*, *& ſtatum homagium & fidelitatem eidem* Richardo *nuper Regi*, *ut premittitur factum reſignavit & reddidit*. His Depoſition was in this form following.

Nos proceres regni ſpirituales & temporales & ejuſdem Regni commitates omnes ſtatus ejuſdem regni repreſentantes, commiſſarii ad infra ſcripta ſpecialiter deputati, pro tribunali ſedentes, itteratis perjuriis multiplicibus, crudelitate, aliiſq; quam pluribus criminibus, dicti Richardi *circa regimen ſuum in dictis regnis, ac dominio ſupradictis, pro tempore ſui regiminis commiſſis & perpetratis, ac eorum dictis ſtatibus palam & publice propoſitis exhibitis & recitatis, que adeo fuerant & ſunt publica notoria & manifeſta & famoſa quod nulla poterant nec poſſunt tergiverſatione celari, nec non confeſſione predicti* Richardi, *recognoſcentis & reputantis & veraciter ex certa ſcientia ſua judicantis, ſe fuiſſe & eſſe inſufficientem penitus & mutilem ad legimen & gubernationem regnorum & dominii predictorum & pertinentium eorundem ac propter ſua demerita notoria non immerito deponendum, per ipſum* Richardum *prius emiſſa ac de voluntate & mandato ſuis corum dictis ſtatibus publicata eiſq; expoſita & notificata in vulgari, prehabito ſuper his & omnibus in iſto negotio recitatis, corum ſtatibus antedictis, & nobis in deliberatione diligenti vice nomine & authoritate nobis in hoc parte commiſſa, ipſum* Richardum *ex abundanti*, *& ad cautelam, ad regimen & gubernationem dictorum regnorum dominii juriumq; & pertinentium eorundem, fuiſſe & eſſe inutilem & inhabilem, inſufficientem*

tem pennitus & indignum, ac propter premiſſa ut eorum pretextu, ab omni dignitate & honore regijs ſi quid dignitatis & honoris hujuſmodi in eo remanſerint, merito deponendum pronuntiamus decernimus & declaramus, & ipſum ſimili Cautela deponimus, per noſtram definitivam ſententiam in his ſcriptis, omnibus & cæteris hominibus dictorum regnorum, & dominii & aliorum locorum, ad dicta regna ac dominium ſpectantium, ſubditis & ligeis ſuis quibuscunque inhibentes expreſſe, ne quiſquam ipſorum de Cætero prefato Richardo tanquam regi vel domino, regnorum aut dominii predictorum paret quomodo libet uel intendat. And affixt theſe following, being part of theſe articles exhibited and alledged to juſtify their conſent, to admit his reſignation, and foregoing depoſition.

1. That he had waſted the Goods and Revennues of the Crown by profuſe and extravagant gifts, and alienations, to perſons, nor worthy, nor well deſerving; and brought himſelf into a neceſſitous Condition, whereby he became burthenſome to his People.

2. That his Judges were through Terror enforced, to deliver their opinions privatly in order to the Gratifying, and ſerving his arbitrary purpoſes Contrary to Law, and the Dictates of a free Conſcience.

3. That he had Incurd the manifeſt ſin of perjury, by leveying force againſt his People, Contrary to their freedom, merit and expectation, and committed other outrages in that Unnatural War by his Officers and Army.

4. That Contrary to his charters of pardon, he put ſome of his Nobility to death, diveſted others of their Eſtates, exacted fines and amercements, *de novo*, or otherwiſe denied the benefit and allowance of the ſame.

5. That he had veſted ſome Perſons with a Parliamentary Power in diſtruction of the priviledg of Parliaments, and Cauſed the Parliament Rolls to be raſed and altered to ſerve his purpoſes.

6. That againſt the Laws and Uſage of the Nation, he denied the *Duke* of *Lancaſter* Juſtice, upon his bill of impeachment againſt the *Duke* of *Norfolk*.

7. That without Cauſe and againſt Law and his Oath, he baniſhed the *Duke* of *Lancaſter* for Ten years.

8. That Contrary to the Laws and his Oath, he made vndue, and arbitrary Election of Sheriffs, to ſerve in that Office for the Nation, of ſuch as were Corrupted to ſerve his ends.

9. That he forfeited his publick faith to the Nation in the non-payment of moneys, He had borrowed, in the violation of his promiſe and accord.

10. That though he might out of his peculiar Revenues ſupport the ordinary expences of the Crown, yet by large Donatives and Profuſion, he not only conſumed and waſted thoſe, but involved himſelf in debts; though moreover he had extorted greater ſupplyes of money than any of all his predeceſſors.

11. That he made his Will his Law, that

he Clamed the ſole and abſolute Power to make, alter, or abrogate Laws, and according to his arbitrary pleaſure, he diſtributed Juſtice to the People.

12. That he unduly procured an Act of Parliament to enable him, *ut poſſet adeo eſſe liber, ſicut aliquis progenitorum ſuorum exſtitit ante illum*, by Color whereof, he aggrieved his People, contravening ſeveral Acts of Parliament that were in force, and unrepeald.

13. That he continued the Sheriffs in their Offices, to Gratify his own deſign ſome Two, Three or Four years, contrary to, and againſt the expreſs words of the Statute.

14. That though the Elections of Members to Parliament, ought to be free and unprelimitted; yet he Cauſed Sheriffs to return, perſons of his own particular nomination only, and which he was able by bribes, threats, or flattery, to encline and diſpoſe, to a complyance with his extravagant and avaritious purpoſes, (and more particularly for the Tax on Wool,) whereas they ought to have freedom to propoſe their Greivances, and to provide fit remedies to them in all occaſions by their own voluntary Actings.

15. That he impoſed an Oath upon the Sheriffs that they ſhould obey all his Commands, under the Great or Privy Seal, and that he, his Deputies and Subſtitutes, ſhould Impriſon all, or any perſons that ſhould by private or publick Conference, call ſuch his Actings into diſpute or cenſure, untill his

farther pleaſure Contrary to *Magna-Charta* and his Oath.

16. That his Counſellors and Juſtices were ſo frequently overaw'd and diſcouraged, that they durſt not adviſe, what in a good conſcience they knew was neceſſary for the good Eſtate of the Kingdom.

17. That he Carried forth of the kingdom the *Regalia Corona*, the laſt and ſureſt truſt of the Crown, with out Conſent of Parliament, and Raced and Conceld the Rolls and Records that Concern'd the Government out of an Evill purpoſe and intent.

18. That he was variable and inconſtant in his Actions. ſo mutable and inconſtant to his Oaths and promiſes, both at home and abroad, that he was Cenſured by all the World a perfidious perſon to his own Infamy, and the Nations Detriment and Scandal.

19. That he Challenged an abſolute Juriſdiction and Property, over the Lives, Eſtates and Libertys of his People, Contrary to all Law and Cuſtom.

20. That Contrary to *Magna Charta*, he Commanded Martial Law to be executed in Civil matters and would have Clames defended, by battle, in unuſual and unequal Caſes, by perſons unſutable in Age or Power.

21. That he impoſed Unuſual and Alegal Oaths, which he exactted the performance of under panaltys, and made the People enter into obligation to obſerve the

ſame againſt all Liberty; Right and Juſtice.

22. That he Endevored to Enſlave the Nation after his death, by obliging the Succeſſor, or in his default, Legatees by his laſt Will deputed, to whom he bequethed moſt part of his Eſtate, that they ſhould enforce the Execution of ſeveral Acts of Parliament, unduly and by force obtained againſt the Known Laws and Libertys of the People.

23. That he forejudg'd the *Duke* of *Lancaſter*, and forbid any Man to petition or Interceed for him, againſt Juſtice, Mercy and his Oath at Coronation.

24. That he leveyed an uncuſtomed force, in an unuſual manner, which committed much violence and outrage upon his people, without being prevailed upon by the Petitions and Remonſtrances of the Kingdom for redreſs; and by that means gave the Nation a juſt cauſe of Uproar and Commotion.

The beſt pollicy that Kings can uſe to perpetuate their Thrones to them and their poſterity, is to govern their Subjects ſo as may win their Hearts and Affections, and not to exerciſe Prerogative beyond the bounds of Law; this being a moſt certain experienced Rule, which *Ariſtotle* gives. There are two inteſtine Cauſes moſt perilous, and frequent of all others, by which a King is loſt uſually and ſubverted. Firſt, if the Nobles and People diſſent from the King himſelf. Secondly, if Kings will Raign Tyrannically, and Uſurp a greater Domination or Prerogative, than the Laws of their Kingdoms give them. But aſſuredly a Kingdom is preſerved by contrary remedies, eſpecially by a moderate, kind and temperate form of Government, for by how much the more moderate the King ſhall be, and contented with ſmaller and fewer Prerogatives, by ſo much the more laſting ſhall his Kingdom neceſſarily be; for by this means it receeds further from the Domination of a Tyrant, and comes nearer to the equality of Mankind, and humanity of Life, and is leſs envied of his Subjects, &c. *Rex dicitur à bene regendo, non à regnando, Tyrannus dum populum ſibi creditur, violenta opprimit dominatione: ſecuritas ſecuritate mutua paciſcenda eſt, errat enim ſiquis exiſtimat tutum eſſe regem, ubi nihil à rege tutum eſt, unum eſt enim inexpugnabile munimentum, amor civium.*

We need not wonder if the ſum of their grievances riſe ſo high, and the account grew ſo immence, the methods were precluded, and the intercourſe diſappointed that ſhould have begot a better underſtanding betwixt King and People, the Source of all the injuries, both particular and general, ariſe from this one Cauſe mentioned in the two laſt Articles; the King was alienated and perverted from giving entertainment to the Petitions of his People. Petition is all the remedy a Subject hath againſt the King, when he Acts (or any by his authority) beyond the order of his Laws. 'Tis called the Subjects Petition of Right, becauſe of the Right the Subject hath againſt the King, by this way of addreſs, by order of his Laws both in and out of Parliament. 'Tis a Liberty

Stamford, Petition, Cap. 22.

berty belonging, and due unto the Subject, both by his *Magna Charta*, and aſſured by Oath at Coronation; 'tis atteſted by Act of Parliament, that the King is by Oath and Conſcience to hear and remedy grievances by Law, upon the complaint of his People.

Mag. Ch. *C.* 29. *Oath Cor.* 20. *Ed.* 3. 25. *Ed.* 3. *Part.* 6. *Proc.* 12. *Jac.*

It is the only ſuitable and reſpectful application from all ſtates and conditions of perſons in ſubordination; and gives the higheſt approbation and allowance to Prerogative imaginable, whether we reſpect the perſon *à quo*, or the other *ad quem* it is directed.

1. In the expreſs or implyed acknowledgment of his Power, to whom they ſo addreſs, who is allowed can, and of his goodneſs and clemency will; anſwer their humble ſupplications.

2. In the Confeſſion of his Piety and Juſtice (the two chief and infallible ſupporters of the Throne) from whoſe alone Divine and Impartial diſtribution they acknowledge themſelves ſecure from violence and wrong.

3. In the magnifying and confeſſing his intereſted care, to whom alone, as *Pater patriæ*, and *Conſervator populi* they appeal, and modeſtly mind him of his Covenants and their hopes.

4. In the manifeſtation of their own inſufficiency and impotency, by their reſignation and acquieſcence in his Soveraign Power for remedy.

5. In the conſerving and maintaining ſuch a reciprocal intelligence, that by this way of dutiful Communication, they are Sentinels

and Spies on all occaſions, having obſerved to preſent the dangers of the Nation, and again to receive in anſwer, ſuch diſpatches as may inable them to be ready to ſerve the Government in all emergencies.

6. In the prevention of all ſurpriſe upon the King, by partial and ſelf-intereſted men, that may for private reſpects and deſigns, really influence the Monarch to a general prejudice.

7. Becauſe by this humble way of preſenting themſelves by ſupplication unto their King, they act ſuitable to all the commands given and allowed by Divine and humane powers.

If the publick benefit and conveniency will noc incline, yet I wiſh the puniſhments inflicted on the Gain-ſayers, and Oppoſers of this mutual, reciprocal, beneficial and good underſtanding between the King and People, may deter all perſons from diſcountenancing ſuch neceſſary and dutiful correſpondence. The Articles againſt the Spencers, *inter alia*, were, for that they would not ſuffer the Kings Grandees, nor good Counſellours to come near unto the King, and to adviſe him. 2. For giving evil Counſel that the King ſhould not anſwer the Petitions of his Grandees and others, but according to their pleaſures. 3. For putting out good, and putting in ill Miniſters of State in their places, as Sheriffs, Juſtices, *&c.* for adviſing to raiſe force againſt the Tenor of *Magna Charta.*

Extra Parliamentum nulla petitio eſt grata licet neceſſaria in Parliamento nulla petitio eſt ingrata ſi neceſſaria. Cook 4. Inſt. 11.

Amongſt the many Articles againſt the out great Cardinal *Woolſey*, this wes not inconſiderable, that he hindred the Kings Liedges to ſue to him by petition directly and indirectly, Herb. Hiſt. H. 8. Fo. 237 art. 37.

The miſerable Conſequences that Enſued the denial of the petition of the Peares againſt *Gaueſton* are legible in a moſt Deplorable Inſtance. Speed 655.

But leaſt ſome too zealous in Defence, of the wickedneſs of the Late Rebellion ſhould from the two laſt preſidents, pretend a Vindication of the Horrid Treaſon perpetrated by the late Rump or Juncto, for Parliament in no manner of acceptation were they at that time; on the ſacred perſon of the late King let them take the following reaſons by way of antidote: and note the difference.

1. Becauſe in the Parliament immediatly ſucceeding the depoſition of King *Richard* the Commons did diſclame in all Right belonging unto them, and did confeſs that the judicature and judgments of Parliament belonged to the King and Lords. 1 H. 4. n. 49.

2. Becauſe the Commons are no Judges of the Nobillity, neither in nor out of Parliament much leſs of the Majeſty of *England*, Prince *Edward* in anno 1260. as only Heir apparent to the Crown, appeald from the Judgment of Lords as not his Peers. But the like priviledg was not Allowed or pretended by Earl *John* (afterwards King)

who was ſentenc'd by the Lords *demeruiſſe Regnum* for attempting ſomething in prejudice of his Brother *Richard* the firſt: nor yet to their Uncles: *Gloſter, Richard* the *2d.* and *Sommerſet, Edward* the *6th.*

3. Our Law Books Generally inſolve, the King hath no Peeres in his own Realm, *Brartou. lib: Cap*: 8. *Fleta. lib*: 1. *Cap.* 5. *Stamſo: lib*: 3. *Cap.* 1: *F.* 15. 3.

Spelm. Com. Tom. 1. 411. 29. Ed. 1.

4. *Rex non poteris ſecundum legem in lite ſtare, Coram judice ſuo, agendo, vel reſpondendo per Dignitatem naturalem.* The Kings of *England, ex preheminantia ſtatus ſua Regia dignitatis, non debent reſpondere, Coram aliquo judice, ſuper juribus ſuis in regno.*

5. Becauſe multitude of Statutes dictate the King to be only ſupream head, both of the Church and Realm of *England*, both of which, recogniſe no ſuperior under God, but the King only.

6. Though Articles were drawn and exhibited they were rather to Teſtify why they accepted their reſignations, then any ways offered as a Charg to which they were to anſwer, as it were on Tryal, in order to Execution.

'n Parl. 125. Ed. 2

7. Even after Deprivation or Reſignation, they acknowledged ſome remaines of Royalty in them, as may appear by their ſurrendring up their homage, and by the puniſhment of *Mortimer* in Treaſon, for the death of *Edward* the 2d,

8. Their depoſition was authoriſed by the Legiſlative Power in its fulleſt acceptation (not by the judiciall) Conſented to by both Houſes, and ratifyed by the Kings Fiat and Aſſent,

6. Both

9. Both Lords and Commons unanimouſly agreed in the reſigning of their homage and acceptance of the Ceſſion.

10. Neither of theſe Kings had any violence offered to their perſons by both, or either Houſes of Parliament, nor were by any Inſtrument endeavored to be Depoſed or Deprived of their Royalty and Power. until they had from their own allowance and Conſent, Diveſted themſelves of their Authority, Publiſhed their inability and waved the Government.

Henry the 4th. pretended more than a Good many Titles, the reſignation of his predeceſſor, an obſcure Title by diſcent, thoſe he whiſpered at home, but to all Forreign States he inſiſted on his Clame by proteſtation, to be by the united Conſent and Election of the Parliament or people in his own only perſon, and in this form in Parliament expreſſes it, as Coming from the Blood Royall from King Henry. And through the right that God of his grace hath ſent me with the help of my Kinn and of my Freinds to regain the ſame which was in point to be undon for want of good Government and Due Juſtice, and after by Parliament intailed the Crown upon his iſſue Male. Speed 746. 7 H. 4. C. 2.

Henry the 5th, could not pretend a fuller larger right and title then what, was gotten by the poſſeſſion of his Father, and the conſent of Parliament by which he ſwayed the Scepter during the two ſhort Continuance of his victorious and renowned Reign, Dying he will'd the Crown unto his brother, His Son (after Henry the 6th.) Speed 807.

being then a tender Infant. But that Donation by General diſlike was diſapproved. And the Conſequence of ſuch a preſident apprehended dangerous, which would have brought the Title to the Crown to have been little better than Adoptive, a thing utterly diſallowed being againſt the known and certaine Rule of inheritance and diſcent, or the Popular Election, yet ſuch is the fate of Kings that theſe Titles of the laſt three, that were ſo fairly eſtabliſhed and aſſured to them by Parliament, at the entry of the next Monarch were all Cal'd in queſtion, and by the ſame authority declared to be void, and by intruſion for which they and the Heirs of their Bodys are utterly diſinabled, as unworthy to enjoy any inheritance Eſtate or Profit, within the Realm of *England* or Dominions of the ſame for ever.

Obſerv.

Obſerv.

1 *Ed.* 4. n. 9, 10, &c.

Walſing Hiſt. Angl. p. 459.
Speed 533.
Speed 575
Daniel 185
9 *Ed* 4 c. 2
1 *Ed.* 4 c. 1

The Parliament ſummoned by King *Henry* the 5*th.* met after his Death for the eſtabliſhing *Henry* the *6th.* his Succeſſor, and making other needful proviſions for the Nations welfare, Parliaments have not always been Diſſolved by the Death or Depoſition of former Kings, but that their Actings have been eſteemed valid, as may appear in King *John*, *Ed.* 1. *Ed.* 2. *Rich.* 2. *H.* 6. *Ed.* 4. And thoſe perſons elected and admitted to the Government by their Vote and Suffrage, have rarely been adjudged to come in by Illegal Uſurpation. *Henry* 4. 5. and *6th.* were declared indeed, though not of right Kings of *England* Succeſſively. Becauſe the Laws and other judicial Acts in the Courts of Juſtice, are the

Acts of the Parliaments, and Courts themſelves which do continue, not of the Uſurping Kings that made them.

Edward the *4th.* aſſumed the Royal power not without the beſt of Titles to wit by right of inheritance and Act of Parliament. In purſuance of an agreement betwixt *Henry* the *6th* then King; *Richard* Duke of *York* his father and himſelf having alſo the Election of the Nobility and Conſent of the Commons in the Field which got him the poſſeſſion, which he was forc'd once again to quit, overpowered in forces by the then potent Earl of *Warwick*, who aſſured by intail the Crown unto the Heirs of the Duke of *Clarence*, But after the Death of *Henry* the *6th.* (who had played *Rex* a ſecond time in that Interval for only Six months) by the favor of the People and the aſſent of Parliament, he was reveſted in the Throne. And the tranſaction againſt *Richard* the *2d.* made in the 1. of *Henry* the *4th.* were after in the firſt of *Edward* the *4th.* repeald. The acts of one being always adjudged to be in force until annulled or repeald by a ſubſequent Parliament, and the ſame Parliament knowing certainly and without doubt or ambiguity, the Right and Title of *Edward* the *4th.* to be by Gods Law, Mans Law, the Law of Nature, onght to be their Lord and King and that he was ſo from his Fathers Death, therefore beſeech him, that by the authority aforeſaid, his Right and Title to the Crown before ſpecified, be declared, taken, and accepted, and reputed true and right wiſe, and the ſame Right

Rat. Parl. 1 *Ed.* 4. n. 8.

and Title to abide and remain upon record perpetually, by the ſaid advice, Aſſent and Authority.

Exact. Ovid. pag. 665, 666, 667.

Farther the ſaid Record reciteth that the Clame of *Richard* Duke of *York* (father to King *Edward* the *4th.*) For the Imperial Crown againſt King Henry the *6th.* aſter he had Reigned 28 years was by both partys ſubmitted by appeal unto the diſpoſition of the Parliament, (the Lords being ordered to deliver their opinions on that debate freely without hazard or danger of Impeachment) who determined and decreed the Right was in the *Duke*, yet Continued the Crown unto the King during his life, on Condition of good Abearance towards the *Duke*, and in Caſe of death or breach of accord the *Duke* was to poſſeſs it: King *Henry* after violating the agreement, and procuring the Death of the ſaid *Duke*, It was by the Parliament Enacted that King *Henry* againſt good faith, troth, Conſcience and his honor brake the ſaid Convention and departed there from, ſo that the ſaid *Edward* was at his liberty to Uſe the ſaid Title after the Death of his ſaid father. Be it therefore Declared by the advice and aſſent of the ſaid authority, that the ſaid agreement, Concord and Act in all things which have been in any wiſe repugnant, to the Right of the ſaid King *Edward* unto the Crown Royal, be voy'd and of none effect. And King *Henry* the *6th.* (His Queen) were attainted thereupon for High Treaſon, Impriſoned, Depoſed, and he at laſt murthered by the procurement of *Edward* the *4th.* to ſecure the Crown to him and his poſterity.

Tis not to the weakneſs or inſtability, of that aſſembly that we Impute the variations and alterations of their Councels, we may rather admire their prevoyance and wiſdom, that is ſufficient to ſtear, in ſuch viciſſitudes. Being wiſe enough to ſide with power, and therefore like the times, to fits of diſtemper and alteration at the Coming in of Every tide, did build, pull down, enact, and diſenact, turn and return the *Engliſh* Crown, from *York* to *Lancaſter*, and back again, nor can they juſtly be herein Cenſured, for Councels of Men are not Ordain'd to hinder Divine providence or overrule fate, but to foreſee and cloſe with occaſions in the moſt advantageous way for publick good, and when both windes and Current are uncertain to ride at float, till they can diſcern the moſt commodious Haven to Winter In. Obſerv.

No ſooner had *Edward* th *4th.* pay'd his debt to Nature, but his unnatural brother *Richard* Duke of *Gloceſter* (who murthered *Henry* the *6th.* with his own hand) procured himſelf to be made protector of his Nephew the young King *Edward* the *5th.* (who only lived long enough to be inrolled in the Catalogue of the Monarchs) who together with his brother, got into his Cuſtody by perjury, treachery and diſſimulation he Barbarouſly aſſaſſinated, to make away to his Clame and then to the poſſeſſion of the Throne, which was ſpeciouſly

Speed 912. *Baker in* R. 3. *Exact. Col.* 709,710. *Rat. Parl.* 1 M. R. 3.

enough pretended before his Parliament, as the undoubted heir and inheritor of the Crown, by diſcent grounded on the Laws of God and Nature, and the ancient Laws and Laudable Cuſtomes of the Realm, and for farther Caution as his ſureſt Clame added the Title of lawful Election. By the Eſtates in Parliament, who declared him their lawful King by ſucceſſion and election, and by the ſame power Entayled the Crown upon the Iſſue of his Body and declared his Sonn Prince *Edward* heir apparent, by which power *George* Duke of *Clarence* was diſabled to Clame or inherit the Royal Scepter. *Speed* 913.

Obſerv. Thus were theſe broken Titles ſawdered, and endeavored only to be ſupported by the act of Parliament, and thus from the natural propenſity of the People, the genious of the Nation and the Neceſſity to Countenance and ſupport their Eſtabliſhed Laws, they did ſubmit to and ſupport the Monarchy. And even the leaſt pretences of a Right were either allowed or made ſufficient.

From the former and the next enſuing preſident one would almoſt conclude with the ſaying of *Phillip* the *Hardy*, that Kingdoms only belong to them that can get them: Though the next poſſeſſor *Henry* the 7*th*. had the acknowledgment of a ſix fold Title from the Pope, viz. of Inheritance of War, of eſpowſalls of Election, of gift by Parliament, of pontifical benediction, yet 'tis poſſible that of Election and Parliament carried the ſtrongeſt Evidence. His Title follows.

John

Co. 4. Inſt. 36,37

John of *Gant* Duke of *Lancaſter* had by *Katherin Swinford* before Marriage four Illegitimate Children. *Henry, John Beaufort* (after Duke of *Sommerſet*) *Thomas and Joan*, in the *20th.* of *Richard* the ſecond, he by Act of Parliament makes them Legitimate in the form following. *Rex & Chariſſimus conſanguineis noſtris Nobilibus viris*, Johanni *militi.* Henrico Clerico Thomæ *domicello ac dilecte nobis nobile* Johanne Beaufort *domicelle*, Germanis *præclariſſimi Avunculi noſtri*, Johannis Ducis Lancaſtre *natis*, *ligeis noſtris ſalutem, nos dicti avunculi noſtri genitoris veſtri, precibus inclinati, vobiscum qui vt aſſeruitur defectum natalium patiamini vt hujuſmodi defectum (quem ejuſque qulaitates quaſcunque præſentibus habere volumus pro ſufficientur expreſſis) non obſtante, ad quaſcunque honoris, dignitatis, (excepta dignitate regali, præ eminentias , ſtatus gradus & officia publica & privata tam perpetua quam temporalia, atque fudalia & nobilia. Quibuscunque nominibus nuncupantur, etiamſi ducatus principatus commitatus. Baroniæ vel aliæ feuda fuerint etiamſi mediate vel immediate vel a nobis dependeant ſen teneantur, præſui, promoveri, eligi, aſſumi, & admitti illaque recipere retinere, perinde libere & licite valeatis, ac ſi de Ligitimo nati exiſteretis ; Quibuſcunque ſtatutis ſeu conſuetudinibus Regni noſtri* Angliæ *in contrarium additis ſeu obſervatis (quæ hic habemus pro taliter expreſſis) nequaquam obſtantibus ac plenitudine noſtra regatis poteſtatis ac de aſſenſu pertinenti noſtri tenere præſentium diſpenſamus , voſque ut veſtris quemlibet natalibus Reſtituimus & Ligitimamus. Henry* the 7th.

was Son to *Edward Haddam* Earl of *Richmond*
and *Margaret* his Wife, daughter and
heir of the above mentioned, *John Beufort*
Obſerv. Duke of *Sommerſet*. Though he diſcended
from this corrupted and reſtrained original,
he clamed the Crown; and had it intayled
upon him by act of Parliament, without
Glancing at the Title by his eſpowſals with
the Princeſs *Elizabeth*, Daughter and Heir
1 *Ed* 4. *c.* 1 to King *Edward* the 4*th*. coming in by Election,
9 *Ed.* 4. *c.* 2 being ſeldome, or never adjudged an
illegal Uſurpation in any Parliament.

25. *H.* 8. In the Reign of King *Henry* the 8*th*. the
22. Parliament did not only Authoriſe the divorces
B. 28. of that King, but did baſtardiſe, and
H. 8. Legitimate his Children by that ſame power,
and did likewiſe, Impower and Inable him
to diſpoſe of the Crown unto or from his
Children, with and under what limitations
and conditions pleaſed him, and enacted any
of his Children aſſuming the Crown,
otherwayes then by this Authority, to
loſe their Right and be adjudged Traitors
to the Realm; whence it came to paſs, that
35. *H.* 8. 1. King *Edward* the 6*th* Queen *Mary* and Queen
1 *M.* ſeſ. *Elizabeth* did hold the Crown by Authority
2 *C.* 1. of Parliament. The act for baſtardiſing of
Queen *Mary* was indeed repeald. But that
againſt Queen *Elizabeth* was not, who clamed
by ſettlement of her fathers will then
to be enabled by 35. *H.* 8. And her Title being
ſcrupled by the faction of the *Romiſh*
party produced and accaſioned the ſtatute of
13. *Eliz.* the 13 of her Reign, which made it Treaſon,
during the Queens life and loſs of goods
after her Death for any man to deny the

Authority of Parliament to direct, limit, or reſtrain the Crown.

It was made no leſs then High Treaſon to affirm that the Queen, to and with the Authority of the Parliament of *England*, is not able to make Laws and Statutes of ſufficient force and validity, to binde, limit, Reſtrain and Govern, all perſons their Rights and Titles that in any wiſe, may or might clame any Intereſt or poſſibility in or to the Crown of *England*, in poſſeſſion, remainder, inheritance, ſucceſſion or otherwiſe howſoever. 13. *Eliz.* *Cap.* 1,

The Parliaments of King *Henry* the *8th.* did not only nullifie ſome of his Marriages and Ratifie others, declaring ſome of his iſſues Legitimate and hereditable to the Crown, others not, and appoint the Queen if living to be protector, of the Infant King or Queen, that ſhould Inherit the Crown or ſuch of the Lords, as the King by his laſt Will ſhould aſſign; likewiſe preſcribed ſtrict Oaths for every ſubject to take, to maintain the ſucceſſion of the Crown, as it was limited by Parliament, which oaths for any to refuſe, was made High Treaſon, or to write or ſpeak any thing againſt the ſucceſſion of the Crown, as was thereby limited, and withall Inveſted the King with an abſolute Authority, by his Letters Patents under his ſeal, or his laſt Will in writing ſigned with his hand, for lack of Iſſue lawfully, begotten of his Body to give, limit, aſſign, appoint or diſpoſe the Imperial Crown of the Realm, to what perſon or perſons, and for ſuch Eſtate in the ſame, and under ſuch conditions as ſhould pleaſe his Majeſty. The Parliament promiſing by one common conſent, to accept, Love, take dread and obey, as their legal Governors, and ſupream heads, ſuch perſon or perſons only, as the King by the Authority of theſe Acts ſhould give the Crown unto, and wholy to ſtick to them as true faithful ſubjects. Provided that if any of his Children or Heirs, afterward did uſurp, one upon the other in the Crown of this Realm or Clame or Challeng the ſaid Imperial Crown, otherwiſe or in any other Courts, form, degree, or condition, then the ſame ſhould be given, diſpoſed, and limited unto them by the King, by Vertue and Authority of Parliament. That all and ſingular offenders, in any of the premiſes Contrary to theſe Acts, and all their Abetters, Maintainers, Facters, Counſellors and Aiders therein ſhall be decreed and adjudged, High Traitors to the Realm, and that every ſuch offence ſhall be accepted, reputed and taken to be High Treaſon and the offenders therein, their aiders *&c.* for every ſuch offence ſhall ſuffer ſuch Judgment, pains of death, loſſes and forfeitures of Lands, Goods, and priviledges of ſanctuary, as in caſes of High Treaſon. And over that as well the Kings ſaid Heirs and Children, and Every ſuch perſon and perſons to whom the Crown ſhould be limited as aforeſaid and every of their Heirs, for every ſuch offence above ſpecified by them to be committed ſhall looſe and forfeit as well all ſuch Right, Title and Intereſt, that they may clame or challeng in or to the Crown of this Realm as Heirs by diſcent, or by Reaſon of any Gift or Act, done by the King for his or their advancement by Authority as aforeſaid or by any manner of meanes whatſoever. And the ſtatute that intailed the Crown upon Queen *Mary* after the death of *Edward* the *6th.* hath this proviſo. That if the ſaid Lady *Mary* do not keep and perform ſuch conditions as King *Henry* by his Letters Patents or laſt Will in writing, ſhould declare and limit to her ſaid Eſtate in the Imperial Crown. That then and from henceforth the ſaid imperial Crown ſhall be and come to the Lady *Elizabeth*, and the Heirs of her Body lawfully begotten, in ſuch like manner and form, as though the ſaid Lady *Mary* were then dead without any Heirs of her body begotten, any thing in this Act to the contrary notwithſtanding. And the like proviſo there is for Queen *Elizabeth*, that if ſhe do not *&c.* it ſhall come to ſuch *&c.*

35. H. 8. C. 1.

Let me here obſerve that the Parliament have not Augumented only but likewiſe have Abridged, Allayed, reſumed and aboliſhed, ſome part of the Kings Royal Power and Prerogative upon juſt cauſe, that is when it becomes onerous, miſchievous or dangerous to the ſubject, Inconvenient to or Inconſiſtent with the Kingdoms and Peoples peace, Welfare, Safety, Liberty or Laws.

Magna Charta, Charta da Foreſta ſtat. de Talagio non concedendo Art. ſup. Chart. confirmationes lib.
1 Ed. 3. c6. 7
21 *Jac.* 24
1. R. 3. c. 2.
4 H. 4. c. 13
7 H 8. c. 3.
petition of right.
3 Car. cum multis aliis

Edward the *6th.* (whoſe Title you may ſee before) was the Seventh Monarch that came in Infancy or minority to the Throne, (which can be ſaid only affects the perſon of the King) for the wiſdom of the Crown,

Obſerv.
1 Ed. 6. 11.

reſting in the Councels of many, who are Equally wiſe whether the King be young or old, (ſecures the Government from all appearance of inſufficiency) Deſigned his ſucceſſor by his Will, with the conſent of his privy Councel (and with the allowance of ſome Proteſtant Biſhops) to the diſinheriſon of the Right pretenders formerly ſubſtituted by Authority of Parliament, But for want of ſuch a Power to corroborate his Teſtament or Bequeſt, the perſons pretending by the ſame, incur'd the puniſhment for High Treaſon.

King *Jame's* in his ſpeech, made at Guildhal occaſion'd by the Inſurrection of Sir *Thomas Wyat* expreſſes his Title in theſe words. That I am the Right and True Inheritor unto the *Engliſh* Crown. I not only take all Chriſtendom to witneſs, but alſo your Acts of Parliament confirming the ſame.

Obſerv. From all theſe preſidents 'tis manifeſt that it was the opinion that the Parliamentary Power was the beſt and ſafeſt expedient, to make their poſſeſſions and enjoyments Right and Lawful, which was farther Imployed not only to compremiſe, all difference between competitors, to regulate and adjuſt all miſtaks in Clame or Title, but even to Legitimate both things and perſons, and ever in ſpite of what ever obſtacle to ſuſtain and conſerve the Monarchy. The competitors or pretenders to the Crown, have often imbru'd their hands in Royal Gore. And made no ſcruple to aſſaſſinate one the other.

But the Parliament of *England* neither did
or can, Act to the prejudice of the Monarchy, ſo that we may conclude with Mr. *Speed*. That the Statutes of his time teach the Court of Parliament is of ſuch Authority, and the People of this Land of ſuch Nature and Diſpoſition, as experience teacheth, that the Declaration or Manifeſtation of any Truth or Right by the three Eſtates aſſembled in Parliament, and by Authority thereof maketh before all things moſt faith and certainty to Mens mindes, and removing of all doubts *&c.* *Speed* 914.

It may yet appear that the Parliament both may and have given more Power and Prerogative to Kings, then they *in jure Coronæ* Enjoy of common Right, and to give it with ſuch limitations and qualifications as ſeemed good to them. *Stat de Prerogative.* 1 *H.* 4. *n.* 10.

The King by his Proclamation cannot alter the Law, but he may make a Proclamation, that if any man do contrary to the content of the Proclamation, he ſhall incur his Majeſtys diſpleaſure, but upon pain or forſeiture of Lands or Life he cannot do, *Crompton Parl.* 14.
yet the Parliament did ordain that Proclamation made by the King by the adviſe of ſuch of his Councels, as were named in an Act of Parliament, ought to be obſerved and obeyed as an Act of Parliament, and made another Act to puniſh the offenders againſt the former. And that Power was at laſt revoaked and theſe Statutes repeald by another, and whereas they had veſted that King with a Legiſlative Power for repealing and avoyding Acts of Parliament. They re- 31 *H.* 8. *c.* 8. 34 *H.* 8. *c.* 25. 1 *Ed* 6. 12 28 *H.* 8 17 1 *Ed* [illegible]

reaſſumed, revoaked and annulled the ſame as being againſt the fundamental Eſtabliſhment of the Kingdom.

Before I conclude this Tranſcript, I ſhall only in few words Inſert ſome Minutes of what concern'd the Power clamed by the Clergy and See of *Rome*, And give a brief account of the Parliaments Actings in that concern beginning where we left to Treat of this affair.

The Pope and his Clergy as were mention'd before, aymed briskly at the Head and Throat of Monarchy, and being dangerous in their ambitious deſignes againſt the Crown, created jealouſy from the Monarch; who by the Aſſiſtance and Loyal ſuffrage of his people, ever hitherto happily oppoſed, and prevented the dreadful conſequences and ill affects of that uſurpation. But ſtill finding the Throne ever full of a King that would not give place nor remove, ſits down rudely in his lap. A heavy burthen no doubt unto the Kingdom, conſidering, his arrogant pretence to juriſdiction, his proviſions, penſions, exemptions, Impoſitions, and other oppreſſions. So that the Parliament were awakened to obviate and prevent theſe grievances, and by interpoſing of their Acts, Gradually, And by
24 *H*.8.12 parts to put a reſtraint on their pretences,
4 *Ed*.3.6. as to prohibit the forreign travels of our
25 Ed. 3.5 Coynes, to forbid proviſions and appeals *&c*.
and 22. And Endeavored to beget in them a better
25 *Ed*. 3. underſtanding of their original. Which was
6. &c. declared to be neither *jus divinum* nor *Romanum*, but that their Lordſhips Power and great

Great poſſeſſions was given by the King and
others of h's Realm. And 'tis moſt certain 37 *H.* 8.
the Gleanings of the Crown of *England* were *cap.* 17.
more pretious than the Vintage of the Triple
Crown. Theſe liberal endowments and
Immunitys might have (to a reaſonable
thinking) wedded and united the *Engliſh*
Clergy to the *Engliſh* Scepter, but it was
ambitious Coy, and Covetous, and the affinity
between the Pope and Clergy, was ſo
inſeperate they lived in one the other, and
at laſt were only ſeperated by cutting the
Linck aſſunder. Yet before that happy blow,
there Government was as grateful and obliging 25 *Ed.* 3.
as that over the *Brittains* mention'd *Rat. Parl.*
by *Gildas* and ſpoken of before, for the People 22. n. 15.
complain'd in Parliament that the Kingdom
had been now too long Governed, by
the Clergy to the diſinheriſon of the Crown,
and therefore prayed that the great offices
of the Kingdom might be executed by the
Laity.

The original Power in ordering Church
affairs reſted in the Parliament, which they
at length reaſſumed, not by way of uſurpation,
but reſeiſure, for their poſſeſſion
was moſt antient, for the Popes pretended
Title by preſcription was unjuſt and by intruſion
and was ever under a continual
clame and ſo the Right was ſaved, which
the Parliament by the Law of their Power
have Veſted, and Eſtabliſhed in the King; 25 *H* 8. 19
ſo conclude theſe men pretending in patronage 32 *H.* 8. 6.
both from Right drawn from Heaven
and derived from Men fail in their evidence,
unleſs the people do ſtill believe more than

they are able to underſtand: So that I may now at laſt cloſe with this Aſſertion, that the Legiſlative power, yet continues (and ſo may it ever) in the three eſtates of King, Lords, and Commons, *quod erat probandum*.

Reader, I have been the more tedious in my Tranſcript to convince thee.

Obſerv. & Monit. Br. Car. 1. " 1. That the adminiſtration of juſtice, " by the ſettled Laws in the *Brittanick* Kingdom, are the moſt excellent Rules the " King can Govern by, which by an admirable temperament, give very much " to ſubjects, induſtry, liberty and happineſs, and yet reſerve enough to the Majeſty and Prerogative of any King, who " owns his People as ſubjects not as ſlaves, " whoſe ſubjection as it preſerves their property, peace and ſafety, ſo it will never diminiſh his Rights, nor their Ingenious Libertys, which conſiſts in the enjoyment of the fruits of their Induſtry; and " the benefit of theſe Laws to which themſelves have conſented.

Obſerv. & Monit. Br. Car. 1. " 2. That the Parliament is the moſt " conſiderable, ſafe and only ſupport and " maintenance of the Imperial Crown, " Kings of *England* ſhould call their Parliaments, not more by others adviſe, and " the neceſſity of their Affairs, then by " their own Choice and Inclination; for the " Right way of Parliament is moſt ſafe for " the Crown and Beſt pleaſing to the people. The end of calling a Parliament being to uſe their adviſe that ſit, the King " ought to have Charity enough to think

“ there are Wiſe men enough amongſt them, humility enough to think it fit, he ſhould in ſome things hearken to them, whoſe Councel he may want.

“ 3. That it is the Nations ſtrength and ſecurity, againſt forraign Incroachment and Invaſion.

“ 4. That the Parliament by Law or Color cannot be ſuppoſed in a poſſibility to deſign a change, or alter the Government from a ſingle perſon. A Loyal Parliament Concurrent with the King it may be hoped will ſo farr prevail, over the Hearts and underſtandings of the whole Kingdom (who muſt look upon the Members as naturally and Originally truſted by and for them) that it will be above the Reach and Malice of thoſe who ſometimes have too great an Influence upon the people to diſcredit the Kings moſt Intire Actions, and Sincere promiſes, the Members being the beſt witneſſes for the one, and ſecurity for the other. I would not have you entertain any averſion, or diſlike to Parliaments, which in their right conſtitution, with freedom and honor, will never Injure or Diminiſh your greatneſs, but will rather be as interchangings of Love, Loyalty and Confidence betwixt a Prince and his people, nor would the events of this black Parliament, have been other than ſuch (however much biaſſed by factious in elections) if it had been preſerved from the inſolencys of popular dictates, and tumultuary impreſſions. The ſad effects of which, will

Obſerv & Monit. Br. Car. 1.

Εἰκὼν Βασιλ. *lib* 1.

“ no doubt make all Parliaments after this more Cautious, to preſerve that freedom and honor, which belongs to ſuch aſſemblies (ſince the publick Intereſt conſiſts in the Mutual and Common good both of Prince and people) nothing can be more happy for all, than in fair, grave and honorable ways to contribute their Councels in common, Enacting all things by publick conſent, without Tyranny or Tumult. We muſt not ſtarve our ſelves becauſe ſome Men have ſurfeited on wholſome food.

Obſerv. & Monit. Br. Car. I. “ 5. That a free lawful and unprelimited Parliament can only ſafe-guard and preſerve the people, in the Enjoyment of their Religion, Lives,Liberties and Eſtates, againſt the Cruelty, avarice and ambition or other ſiniſter practices of ſuch Miniſters of State, as have an Evil Influence upon the Government. When the King calls his Parliament together, to be witneſſes of his actions, and privy to his intentions; it may certainly be believed he has not the leaſt thought diſagreing with the happineſs and ſecurity of the Kingdom, and when Parliaments in their firſt Elections ſit, full and free (as in all reaſon Honor and Religion they ought to be) things may be ſo carried as will give no leſs content to all good Men then they wiſh or expect, for to overaw the freedom of the Houſes of Parliament or to weak en their Juſt Authority by any violen Impreſſions upon them is a deſign unwor thy of the King who ſhall not need ſ

roug

" rough aſſiſtance, if he have Reaſon and Ju-
" ſtice of his ſide. The King ſhould reſolve to
" Reform, what by free and full adviſe in
" Parliament he is convinced to be amiſs
" to grant, whatever his Reaſon and Con-
" ſcience tels him is fit to be deſir'd. And
" if any perſon durſt to be ſo Impudent as
" to move the King to alter his Laws, he
" ought to put a mark upon ſuch a Man,
" as from which all poſterity might know
" his Intention was ever to Govern by the
" Law and No otherways. Let Right Re-
" ligion (in which all are moſt nearly con-
" cerned) and without care of which they
" muſt not look for Gods bleſſing to be
" vindicated and preſerved, Let the Kings
" Honor and Rights (which have an Inſe-
" perable relation with the ſubjects Intereſt,)
" be aſſerted, Let the ſubjects Liberties Pro-
" perty and Priviledg (without which a
" good Man ſhould not deſire to be a King)
" be ſecured and confirm'd, and there is
" nothing the Parliament can adviſe the
" King to, wherein he ſhould not meet them.
" That together they may inform poſterity.
" how much their truſt and confidence in
" each other is a better expedient for the
" peace and preſervation of the Kingdom
" then fears and jealouſies.

" Now ſuch a Parliaments as may be
" duly ſerviſeable to theſe great and publick
" Ends, I pray God ſend the Nation, for
" the unexpreſſible comfort and ſecurity of
" the Monarch and theſe Realms. *uſque in*
" *ſecula ſeculorum* Amen.

EPILOGUS LECTORI.

WHEN the horrid and prodigious Wen, or rather Monſter of *Roman* Rule and Uſurpation, (that had ſo long deformed, and almoſt defaced the beauty and luſtre of the Temporal Power) became ruined under the Juſtice of its doom, and utterly aboliſhed; and the Monarchy and ſecular Government reſtored to its juſt extent of Soveraignty and Juriſdiction, it might have raiſed an enquiry, worthy deliberation (before the high Commiſſion or Conſiſtory, were reared out of the former rubbiſh.) Whether from true reaſon of State, which is the Art of Governing to the beſt advantage for King and people: An Eccleſiaſtick State or Policy, ought to have been erected and entertained, or a Goſpel-Chriſtian Liberty permitted and allowed. I do not intend a Volume, altho the ſubject matter doth both require and deſerve it, but ſhall labour to give an impartial account in little, of the policy and practice of ſeveral ages, for the reſolving the point in queſtion, and which I propoſe under the following conſiderations.

1. Of Religion, as Heathen under Heathen Rulers.

2. As Chriſtian, under Heathen Governours.

3. As Chriſtian, under Chriſtian Magiſtracy.

1. The heathen potentates that ſtuddied

all the ends and intents of Dominion, and ſecured themſelves with all expedience, that could any way, improve the ſame, never thought their Government concerned in the Queſtions of Religion. For when the Philoſophers of old ſeparated themſelves into ſundry parties, and were divided in their Sentiments in the moſt Weighty matters and concernment of their Religion, and their Gods. And that thoſe their Opinions Variouſly Influenc'd the People (Nor were there fewer Sects in *Athens* then are now in *London* or *Amſterdam*) yet the variety in Opinion begot no Sedition or Civil warr in *Greece*, nor did the more ſtrong and numerous party ſet up an inquiſition and high Commiſſion or Committee againſt the reſt, every Man enjoyed his own perſwaſion more than either his Goods or Wife.

The ſame likewiſe happened in the Religion of the Antients and though ſeveral Cittys addreſs'd their worſhip to ſeveral Deitys yet we read not any War, fomented or occaſioned for their difference in Religion.

The Poets have Introduc'd the Gods contending for Common-wealths and Empire, but never Common-wealths in War or Controverſy for their Gods.

This quiet and happineſs (which to the ſhame and ſcandal of the Chriſtian name) was enjoyed 400 years, among the Heathen, continued ſo long and uninterrupted, becauſe every Man following the Rules of his own judgment, allowed that liberty to others he found ſo neceſſary for himſelf; The Religion during this period was all of a piece although not Uniform.

2. But 2. when in fulneſs of time according to Gods Eternal purpoſe and decree, our Bleſſed Saviour and *Meſſias* Came in the fleſh, and owned himſelf the Auther of a new Religion. The Emperor *Tiberius* the moſt jealous in point of State and Prerogative of all the *Roman* Emperors.

Though he underſtood our Saviour was the Head of that new Sect and that Great multitudes followed him, yet did the Growth of Chriſtianity never increaſe his care of Empire at *Rome*, nor trouble his ſleep at *Capria*. Neither was *Pontius Pilate* (though a moſt Cruel and Unjuſt Judg) conſenting to his Execution, though the Crimes objected to him by the High Prieſts, Scribes &c. Run ſo high as that he made himſelf a King, denied Tribute unto *Cæſar*, and in the Language of our day, threatned him that if he let him go he was not *Cæſar*'s Friend, but he diſcerned their envy, and declared he found no fault in him.

The Martyrdom of *Stephen* was an Act of the High Prieſts &c. ſo was the Subornation of the fals Teſtimony againſt him, and the ſtirring up the Rabble in a Brutiſh and Riotous manner to execute their Cruelty, there was no interpoſing of the Civil Authority in the buſineſs of Religion, or any diſturbance to the State ſuggeſted from his Doctrine. No otherways the ſuffering of *John* under *Herod* though he knew that multitudes went out of *Jeruſalem* to be baptized of him, yet when he heard him, he did many things and heard him gladly, and was exceding ſorrowful at his Death, which Princes ſeldom are of Men who lived to their jealouſy and danger.

Act. 5.38. But the concurrent judgment of three conſiderable diſintereſted perſons in favor of Chriſtianity may atteſt the reaſonable practice of the Magiſtrate in matter of Religion The 1. was of *Gamaliel* deputy of *Achaia*, and Town-cleark of *Epheſus* &c. where *Paul* was proſecuted by the High Prieſts before his ſeat of juſtice, it was his Opinion on Beſt experience that the unblameable ſect of Chriſtianity might ſafely and ought to be left to ſtand or fall by Gods providence, under a free tolleration of the Magiſtrate.

Act. 18.14 The next was *Gallia* a *Roman* deputy, The Jewes at *Corinth* had hurried *Paul* to his Tribunal, laying the uſual charg againſt him, that he perſwaded Men to worſhip God contrary to the Law, he drove them away with this anſwer, if it was a matter of wrong or wicked Lewdneſs, Reaſon would that he ſhould bear with them, but if it be a Queſtion of Words and Names and of your Law, look ye to it, I will be Judg of no ſuch matters. His judgment was that to puniſh Chriſtians meerly for their Doctrine and practice, unleſs they were Malefactors otherways, was a thing out of the Magiſtrates province and altogether unreaſonable.

3. The third Caſe was no leſs remarkable, *Paul* was appeald by *Demetrius* a Silverſmith and the reſt of the Fremen of that

Act 9. 25. to the end. Act. 23. Company (to whom the Jewes joyned to ad more weight unto the accuſation) who thus beſpoke the aſſembly, ye know that by this Craft we have our wealth, but that by *Paul's* Preaching they be no Gods that be made with hands not only our Craft is in danger to be ſet at nought, but alſo the Temples of the great Goddeſs and Her magnificence, whom *Aſia* and All the World worſhip, ſhould be diſpiſed and deſtroyed. The recorder of the Citty (more moderate and wiſe than ſome would have been in that Office) refuſes to make Inquiſition upon that matter. Adviſes the People thoſe perſons were neither Robbers of their Churches, nor Blaſphemers of their Gods. And therfore if *Demetrius* and his Crafts-men, had any matter againſt them, the Law was open and it ſhould be determined in a lawful aſſembly, but that the whole Citty was in danger to be cal'd in Queſtion for that uprore, there being no cauſe whereby they might give account of that tumultuous concourſe. For it is matter of Right and Wrong betwixt Man and Man that the Juſtice of Government looks to, but that while Chriſtianity, was according to its own Principles carried on quietly it might ſo fall out that the diſturbers of it were guilty of a Riot and their great Citty of *Epheſus* deſerve to be fined for it. Such was the ſence of thoſe upon whom the Emperors then relied for the Government and Security of their Provinces, that they could not comprehend how quietneſs was ſedition or the Innocence of the Chriſtian worſhip could be ſubject to forfeiture or penalty.

This was the undoubted practice in the days of many of the *Roman* Emperors for that according to Natural Right and the Apprehenſions of all ſober Heathen Governors, Chriſtianity as a Religion was wholy exempt from the magiſtrates Laws or Juriſdiction, farther then any particular perſon, amongſt them. Immorally tranſgres'd as others the common Rules of human Society. This is ſufficiently atteſted in the Edict, and Inſtructions of *Trojan*, *Adrian*, *Antoninus*, *Aurelius*, &c.

Mr. *F. M.* Hiſt.

But the Gentile Prieſts who dayly obſerved a decay in their Pariſhes, a neglect of their Sacrafices, adiminution of their profits, and a dayly Viſible increaſe of that Religion did frequently ſolicit their perſecution. Which was the rather occaſion'd by themſelves from a double miſtake in their Religious conduct.

The adminiſtration of the Government of the Chriſtian Church is much contended for have been Epiſcopal (and perhaps it was ſo) who had that appellation rather from their meere ſpiritual function then by juriſdiction from their conſiſtorial Authority, for what See, what Chapter, what Dioces, what Government had they who exerciſ'd their Religion by ſtealth and in corners.

1. They were divided in Opinion which did ſcandaliſe their profeſſion although it did not cauſe any ill Impreſſion in the Heathen Magiſtrate, as may be infer'd from *Themiſtius* Speech to *Valens*. That they were not

Themiſtius to *Valens*.

not to wonder at the Diſſents in Chriſtian Religion, which were very ſmall, if compared with the Multitude and Crow'd of Opinions among the Gentile Philoſophers, for there were at leaſt 300 differences, and a very great diſſention there was amongſt them about their reſolutions unto which each ſeveral ſect, was as it were neceſſarily boun'd up and oblidged, and that God ſeem'd to intend more to illuſtrate his own Glory, by that divers and unequal variety of Opinion, to the end every each one might therefore ſo much the more reverence his Divine Majeſty, becauſe it is not poſſible for any one accuratly to know him.

2. Their ſecond error was they were aliend in affection and forfeited that Union by pride, envy and emulation: which ſhould have been their honor and ſecurity, *Euſeb in vit. Conſt. c. 7.* inſomuch that the Heathens could object unto them that the Philoſophers all of them do agree in the ſame diſciplin, but do ſometimes differ in ſome part of the Opinions, that they Dogmatize in, but yet though they do diſſent in ſome niceties that each Sect obſerveth, they nevertheleſs reconcile themſelves again, for the ſake of that common profeſſion to which they have concurd, whereas after that the affaires of Chriſtians, *Euſeb. lib. 3. c. 1.* were indulged with liberty, their overſeers degenerated into Luxury and Lazineſs, and proſecuted other with hatred and Contumely, when Biſhops ſet upon Biſhops and the People of one of them ſtirred ſedition againſt the People of another and horrible Hypocriſie and Diſſimulation ſprung up to the

utmoſt, extremity of malice, and thoſe which ſeem'd the paſtors, Kicking underfoot the Rules of Piety, were Inflamed among themſelves with mutuall contention, and whilſt they minded nothing elſe but exagerate their Quarrels, Threats, Emulation, Hatred and Enmities, and earneſtly each of them purſued his ambition in a Tyrannical manner, they not only loſt their liberty and reputation, but brought upon themſelves the utmoſt of Calamity and Perſecution, The practices in theſe three Centuries were firſt manad'g by the High Prieſts, Scribes and Phariſees &c. only, oppoſing the Doctrin of their Law, and Phrophets, the conduct of their ſences, the atteſtation of the Words and Miracles of the *Meſſias*, nay rather then forego the honor, and quit the profit of their (then aboliſhed) Prieſt-hood, Marraine and Crucify their God and Founder.

Flectere ſi nequeant ſuperos Acheronta movebunt.

For 2*d*. finding their own pretences Inſufficient, they Aſſociate and Combine with the Gentile Prieſts their profeſſed Enemies, if poſſible to prevail to ſtir up and intereſt the Government in the Quarrel, appearing for the honor of the then eſteemed deity *Diana*, when nothing was Intended but Intereſt and *Mamon*.

3. By their preſident the Heathen Butchers, Poulterers, Chimney-ſweepers, Names fit enough for their Idolatrous Prieſt-hood, were taught *res ſuas agere*, to ſtudy by all baſe unjuſt and cruel Methods even to a

Aruſpices
extaſpices
Pullarii
Capnom.

cruel Methods to a tenth perſecution to ſupport their own Grandure and the State of their ſuperſtition.

4. Came the Biſhops or Overſeers of the People of God &c. *Scavientes in ſuos*, but their Character and Practices will be more fullyexpreſs'd in the third and laſtOſervation.

3. We have now ſeen the Chriſtian Religion carry it ſelf thorough the ten perſecutions of the Heathen Powers, and approve it ſelf ſo far in the Merit of their favor, till at laſt cloathed with ſimplicity, ſupported by faith led by humility, and Armed with conſtancy,and regularly ſucceeded to theMonarchy in the perſon of *Conſtantin* the Great, the firſt Chriſtian Emperor, His piety and munificence unto the Church was ſupereminently great,he endow'd and enriched them with plentiful revenues infeoffed them with large poſſeſſions, and inveſted and admitted them into. (*Nec ſibi nec reipublicæ profuturum*) A joynt ſhare and participation of his Authority, ***mutuum auxilium*** the blind and lame Mans motto in *Alciat*,appropriated to their new conceived union, for policy thought her ſelf blind without the direction of Religion, and Religion found her ſelf lame without the ſupport of policy. But to ſum up this matter in the following inſtance (where his zeal forewent his wiſdom) he made them in an Aſſembled Councel this bewitching complement,God hath made you Prieſt, and hath given you power to judg me, and therfore it is in you to judg me Righteouſly, but you cannot be judged by any Men, it is God only, that can judg you, and

Ruffin. lib. 1. cap. 2.

and therefore reſerve all your quarrels to his tribunal,for you are as Gods to me , and it is not convenient, that a man ſhould Judge of Gods, but he only of whom it is written. No wonder if after this the Biſhops only called themſelves, the Church and pretend to Monopolize the Holy Ghoſt,how juſtly he was puniſhed,for his Blaſphemous courtſhip,and ever ſince how Intollerably and inceſſantly his ſucceſſors have been, affronted and aſſaulted in perſon and authority (not forgetting the unſpeakable Outrages,Bloodſheds,Maſſacres occaſioned by thoſe People, who owe the Original of their clame to that deboyſt charter) may be ſeen in the Hiſtorys of all Ages, of all places unto this day.

What were the effects ſucceding this late Ceremony (in theſe times by ſome yet Reverenced as primative) will appear from thoſe 1ſt. that mention their profeſſion, and 2ly. their practice. *Hillary* Biſhop of *Poyteirs* thus diſcourſes of the firſt. *We do nothing but write Creeds, that while we fight about words, whilſt we raiſe queſtions about novelties, whilſt we quarrel about things doubtful and about Authors, while we contend in parties, while there is difficulty in conſent, while we Anathematiſe one the other, there is now none almoſt that is Chriſts? what a change there is in the laſt yeares Creeds? The firſt decree commands that* Homoouſias, *ſhould not be mention'd; the next does decree and publiſh* Homoouſias, The *third* does *again* by *indulgence* excuſe *the* word *Ouſia as uſed* by *the fathers*, in *their* ſimplicity, the *fourth does not excuſe* but *condem it, It is come to that at laſt, that*

Hill. Bi: Poiters.

nothing among us, or thoſe before, can remain ſacred or inviolable, we Decree every Year of our Lord a new Creed concerning God. Nay, every Change of the Moon our Faith is altered, we repent of our Decrees, we defend thoſe that repent of them, we Anathematiſe thoſe that we defended, and while we either condemn other Mens Opinions in our own, or our own Opinions in thoſe of other Men, and bite at one the other, we are now all of us torn in pieces.

2. As their profeſſion was corrupt ſo was their practiſe blameable. Their pride was now ſo great, no colours would ſatisfie and ſerve to adorn them, but Purple and Scarlet, ſuch their ambition as no ſhare in Power would content them, they aim'd at all; *Religio peperit divitias & filia devoravit matrem*, and then the ſorrowful influences of their authority did diſcloſe themſelves in the irregularity of their ambition, in the inveterateneſs of their contention, in the burthens of their impoſition, at laſt they broke out like a Plague Sore in open Perſecution: And that which was abhorred as Tyranny and Cruelty in the Heathens, if done by a Chriſtian, and Eccleſiaſtical hand, was allowed to be Church-Government, (the only Government by which the whole Earthly World has been, and is aſſaulted and diſcompoſed) and the care of a Dioceſs. So that we may conclude, had not the Almighty by his power and providence, preſerved to his ſervice the little inviſible and Catholick Church; and a people that always ſearched and believed the Scriptures, who made a ſtand by their Teſtimonies and Sufferings, the Creeds had deſtroyed

ed the Faith, and the Church had ruined Religion.

Nothing is more contemptible or truly ridiculous than a Chriſtian that walks contrary to his profeſſion, and by how much any Man ſtands with more advantage in the Church for eminence, but diſobeys the Laws of Chriſt, by that priviledge he is thereby, and deſerves to be the more expoſed.

Out of the *Mercato Vecchio* of the primitive ruins, there is a practiſe at this day endeavoured to beget in us a ſuperſtitious ſtupidity, as to believe that all the Church hath, muſt be *jure divino*, all that ſhe ſaith, muſt be Goſpel and Truth, and all that he doth is holy and juſt.

Freemen lib.5.cap.6

But becauſe they knew that Chriſtian Worſhip was free by the inſtitution of its founder, and that ſome of their pretences and deſigns, could not warrantably be impoſed without intereſting the temporal powers they deviſed a Canonical ſtate trap after the model of *Julians* Politicks, who endeavouring by edict to introduce ſome bordering *Pagan* Ceremonies among the Chriſtians, raiſ'd this influence, that if Chriſtians ſhould obey his Laws he ſhould be able to bring them about to ſomething further which he had deſigned, but if they would not, then he might proceed againſt them without any hope of pardon, as Breakers of the Laws of the Empire, and decree againſt them as turbulent and dangerous to the Government. By which Stratagem at this day

(Laws having been procur'd to the ſame end) thoſe things which were at firſt propoſed as things indifferent, are obtruded as oblidging to the Conſcience, and thoſe matters which they termed *Adiaphora* (and which it may be were at firſt offer'd by the Church, from very good reaſon to a religious uſe) became by this corrupt practice to do more hurt to the Church, then the uſe at firſt did good. For thoſe laws that are only eſtabliſhed as expedient for the Church, cannot be ſuppoſed longer to continue then while they quadrate with the conditions of the State and People, and that there redound leſs hurt to the Church and People by their veneration, then good by the aboliſhing thereof. *Nam Eccleſia debet facere ſicut bonus medicus, ut ſi medicina (experientia docente) plus officiat quam proſit eam tollit, atque utinam idem eſſet in omnibus conſtitutionibus poſitivis.*

Guil. digniſſ.

Whereas if Men would decline this forcible governing of Chriſtianity, leaving it to its own ſimplicity and due liberty, but cauſing all Men to keep the Kings and Chriſts Peace amongſt themſelves, and towards all others; The good that would ariſe to the Chriſtian Magiſtrate and the Church of God would be unaccountable, for I will once more affirm (with confidence) that all the Evils that have befallen the Chriſtian Church, both before and ſince the Reformation (and of which ſome now too juſtly complain off) muſt be imputed to the ſeverity of the Impoſitions of thoſe Men, who have attained the aſcendency in the Eccleſiaſtical State, and with juſt Cauſe Vindicated their own reaſon, from the Tyranny of unneceſſary bonds, endeavor nevertheleſs to lay them upon others, and tye Infallibility to what they think truth, and damnation to whatſoever they call error, but to draw towards a concluſion.

'Tis moſt certain Chriſtian Religion has its Foundation in humility, the raiſing in Juſtice, and the continuance in peace out of which holy root can never grow ſuch rank weeds as Pride, Injuſtice, and Perſecution: And he may be a very good Chriſtian, who letting paſs all tranſcendent and ſwelling knowledg, glories only in this to know Chriſt Crucified, reſolves in this only to live to him only that died once for all, and deſires only this the fruition of a better life, by the merit of that precious Death this is the Faith Hope and Charity of a Chriſtian, which three are all in him that is all in all in the works of our Salvation.

A care Chriſt had of his Church, and ſo he teſtified; a Governor he promiſed and ſo he performed; a Governor that ſhould ever comfort us, in all our Tribulations and Afflictions, and continue us in his truth, (the ſpirit of truth) to Direct and Guide us in all the ways of Godlineſs, Verity and Vertue, this Governor he ſent in a few days after his aſſention, other then this to Rule in Chief in the Inward Man the Church hath none, and he Ruleth ſtil, in the Hearts of her Children and Ever ſhall, who has Intitled every Chriſtian to the liberty of the Goſpel as his Charter for the working out his own ſalvation,

The following Rationate taken out of the *Rubrick* of the *Geneva* ſervice is not unworthy of thy peruſal, as to the diſpute of Ceremonies as follows.

Nous ſauons qu'on fait aillieurs b'eaucoup d'autres ceremonies, leſquells nous ne nions pas auoire eſtre fort antiennes: Mes pource qu' elles eſte invente's a plaiſir, ou pour le moins; per quelque conſideration legere, qui qu'l ſoit, puiſq; elles ont eſte forgee's ſans la parole de dieu: Dautrepart veu q; tant de ſuperſtitions en ſont ſorties, nous ne auons fait de difficulte de les abolire a fin qu'il n'yent plus nul empeachment, qui deſtournaſt le people d' aller droit ment a Jeſus Chriſt: primierment, ſe que ne nous eſt comande de dieu eſt en noſtre libertee, Davantage tout le q; ne ſert de ri en a edification, ne doit eſtre receau en legliſe, et ſi'el auait eſte iutroduit, el doit eſtre oſte, per plus fort reaſon ce q; ne ſert qu' a ſcandalizer, & eſt come Inſtrument d' I'dallatrie et de fauſſes oppinions, ne doit eſtre nullement tollere, ſi non q; nous ne voulons pas eſtre plus ſage q' dieu meſmee.

The Heathens indeed gave this unhappy Character of their Religion.

Lucretius. *ſæpius olim,*
Religio peperit ſcelerata atq; impia mala.

And the Poet repreſenting that Barbarous ſuperſtition, practiſed by *Agamemnon* in the murther of his Daughter, concludes

Tantum religio potuit ſuadere malorum.

But the Chriſtian Religion as Inſtituted by our Bleſſed Saviour, gives not only the ſafeſt and beſt Morall Inſtructions for the conduct of particular Men, but is the greateſt ſecurity to Magiſtrates by the Obedience which it teaches and it fitted to Enjoy no leſs ſecurity under them by a practice conformable to that Doctrin. And were not the command to the Chriſtian Magiſtrate miſtaken (That he is not to be a Terror to good works but to Evil) as well as that to the Apoſtles miſapplied, who only had Authority for Edification not deſtruction. Men need not complain as in the caſe of Zech. And one ſhall ſay unto him. what are theſe woundes in thy hands, then he ſhall anſwer thoſe with which I was wounded in the houſe of my Friend, they that poſſeſs them ſlay them and Sin not, and they that ſell them ſay Bleſſed be the Lord for I am rich, and their own Shepherds ſpare them not. But I pray and hope from the Wiſdome and Chriſtianity of the preſent guides of our Church, that they will have pity upon the King, whom they know againſt his natural Inclination, his Royal Intention, his many Declarations they have induc'd to more ſeverities, then all the ages ſince the conqueſt will contain if ſumm'd up together that he may have calme days and nights, free from care and moleſtation, for as long as the People of God ſtand divided by ſo unjuſt and pernicious a Contention (as is adminiſtred from the Impoſition of things burthenſome and ceremonious) how can it be that he can have any eaſe in his own ſpirit, and grant

Rom. 13. 4. 6.
2 Cor.10. 8.
Zec. 13. 6. 7.
Zec.11.5.
A. M.
Euſeb. in vit. conſt.
Luke 11. 17.18.19.
Gal.5.15.

that he may ſee good agreement of you and all the reſt of his People, that having laid aſide all Animoſities (you may profeſs that true Religion that ties Princes to their People in all lawful adminiſtration of juſtice, and the *P*eople to their Princes in all lawful performance of Allegiance, not countenancing it on the one ſide as a Cloak for ambition, or urging it on the other to any juſt occaſion of diſcontent) you may rejoyce together and may all with one Voice give Laud and Glory for the common good agreement and liberty. And laſtly in all humility I propoſe this to our great Senate (if theſe papers be ſo happy as to merit their peruſal) That where they know there is one and the ſame God worſhipped, one and the ſame faith Imbraced, one and the ſame ſpirit working love, and cauſing an unblameable converſation without any offence unto the State : that they will not ſuffer their Bretheren who concur in all theſe things with them (for ceremonies and things which ſome do call indifferent but others burthens) and which without offence to the State or Prejudice to the Church they may moderat or ſuſpend to be thruſt out of the Land or put of from their native Country or here at home to be maliciouſly perſecuted and evill Intreated to the ſcandal and detriment of the Chriſtian profeſſion, *& eritis opifices rerum & mundi melioris origo.*

Plus debet quam ſolvit inops.
Sed hac mea mica eſt.

W. D.

FINIS.